Supreme Court of the United States.

DECEMBER TERM, 1867.—Original No.

MILWAUKEE & MINNESOTA RAILROAD CO.

Petition for Mandamus.

To the Honorable the Chief Justice and
Justices of the Supreme Court of the United States:

The petition of the Milwaukee and Minnesota Railroad Company, a corporation created by and existing under the laws of the State of Wisconsin, respectfully showeth:

That at a stated term of the Circuit Court of the United States for the District of Wisconsin, begun and held according to law on the second Monday of September, being September 9th, A. D. 1867, and on the 22d day of said term, to wit, December 2d, 1867, the following proceedings were had, to wit:

In the case of James T. Soutter, survivor, &c., vs. The La Crosse and Milwaukee Railroad Company; The Milwauke and Minnesota Railroad Company and others came into court, the said Milwaukee and Minnesota Railroad Company by their counsel, and moved the court to proceed with the execution of the order this court in this case of the 18th of July, 1865, in pursuance of the mandamus of the Supreme Court served on the Judges of this court, in open court, on a previous day of this term, and entered of record, and for an attachment against the officers and directors of the Milwaukee and St. Paul Railway Company for not complying with the aforesaid order for the surrender and delivery of certain rolling stock by said St. Paul Company to said Minnesota Company.

And also on the same day came into court the Milwaukee and St. Paul Railway Company, by their counsel, and presented and filed an answer to said motion, setting forth therein that since the issue of said order of the Supreme Court a portion of said rolling stock had been delivered to the said Minnesota Company, and sold under the decree of court in the case of Frederick P. James against said Minnesota Company, and claiming that said sale carried with it the rolling stock which had not yet been surrendered by the said St. Paul Company to the said Minnesota Company.

And said answer also alleged that there are at present two hostile organizations, each claiming to be the Milwaukee and Minnesota Railroad Company.

Whereupon the court adjudged that the sale under the decree of Frederick P. James against the Milwaukee and Minnesoto Railroad Company did not carry the rolling stock which was retained as aforesaid by the Milwaukee and St. Paul Railway Company and not in possession of the Milwaukee and Minnesota Railroad Company at the time of the said decree and sale.

And on further consideration of the two organizations claiming to be the true Milwaukee and Minnesota Railroad Company, (there being no means before the court of ascertaining the legal organization of the company,) it is thereupon ordered by the court that the Milwaukee and St. Paul Railway Company strictly comply with the said order of the 18th July, 1865, and deliver to the receiver hereinafter appointed, for the use of the Milwaukee and Minnesota Railroad Company, all the rolling stock that was on the whole of the La Crosse and Milwaukee Railroad, or belonged or appertained thereto when Hans Crocker, the receiver, was appointed, which had not been already delivered to said Minnesota Company in pursuance of said order.

It is further ordered that the Milwaukee and St. Paul Railway Company, within ten days after the service of this order, deliver to Cassius Fairchild, the Marshal of this district, the said rolling stock, who is hereby authorized to receive and retain the same until the further order of this court.

And it is further ordered, that the attachment prayed for by the Milwaukee and Minnesota Railroad Company, against the directors and officers of the Milwaukee and Saint Paul Railway Company, be issued, but not served, if said rolling stock is delivered as herein ordered.

All which appears by the exhibit hereto annexed, marked "A."

And the petitioners further represent, that all conflict of organization in the said Milwaukee and Minnesota Railroad Company having ceased subsequently to the date of the order of the said Circuit Court, above recited, and there being thus but one organization thereof, and the same having entire and unchallenged authority, as appears by Exhibit "B," hereto annexed, the said Company, on the 13th of January instant, made application to the Honorable A. G. Miller, District Judge of the United States for said district, to order the said rolling stock to be withdrawn from the hands of the receiver, and delivered to the said Milwaukee and Minnesota Railway Company.

Whereupon the said District Judge minuted his refusal of said application in the words following, to wit:

"*January* 13, 1868.

"Application is made to me, at Chambers, upon these papers, for an order modifying the order made in pursuance of the mandamus, so as to discharge the receiver, and order the rolling stock to the Minnesota Company, which I decline to make, and refer the same to the Supreme Court.

"A. G. Miller, *District Judge.*"

All which appears by the exhibit hereto annexed, and marked "B."

Wherefore your petitioners pray, that a writ of mandamus may be issued out of, and under the seal of this Court, to be directed to the Judges of the Circuit Court of the United States for the District of Wisconsin, strictly commanding them, in said Circuit Court, to order the said rolling stock, as aforesaid, to be withdrawn from the hands of the receiver, and delivered to the said Milwaukee and Minnesota Railroad Company.

Or if Your Honors shall be of opinion that the precise relief hereby prayed, ought not to be granted, that your honors will issue a writ of mandamus to the said Judges of the said Circuit Court, in such form as your petitioners may be entitled, to compel said Circuit Court to enforce and give complete execution to said order of July 18, 1865, as against the said Milwaukee and Saint Paul Railway Company, its officers and agents, and any and all other persons.

Or that Your Honors will grant such other or different writ of proceeding, to secure to your petitioners the benefit of said order of July 18, 1865, as your petitioners may be entitled to, and as shall be agreeable to equity and good conscience.

Or that your petitioners may have such other further or different relief as shall be conformable to equity and good conscience, and as the nature of the case may require.

The Milwaukee and Minnesota Railroad Company, by—

C. Cushing, *Counsel.*

A.

UNITED STATES OF AMERICA, } *ss.*
DISTRICT OF WISCONSIN. }

At a stated term of the Circuit Court of the United States of America for the District of Wisconsin, begun and held according to law, at the city of Milwaukee, in said District of Wisconsin, on the second Monday (being the ninth day) of September, A. D. 1867, present the Honorable Andrew G. Miller, District Judge, presiding.

On the twenty-second day of said term, to wit, on the second day of Decemder, A. D. 1867, the following proceedings were had, to wit:

James T. Soutter, Survivor, &c.,
vs.
The LaCrosse & Milwaukee Railroad Company, The Milwaukee & Minnesota Railroad Company, et als. } In Equity.

This day came into court the Milwaukee and Minnesota Railroad Company, by their counsel, and moved the court to proceed with the execution of the order of this court in this case of the 18th of July, 1865, in pursuance of the mandamus of the Supreme Court, served on the judges of this court, in open court, on a previous day of this term, and entered of record, and for an attachment against the officers and directors of the Milwaukee and St. Paul Railway Company for not complying with the aforesaid order.

And also came the Milwaukee and Saint Paul Railway Company, by their counsel, and presented an answer herein filed, against the issuance of said attachment, setting up matter subsequent in date to the aforesaid order, by which it appears that the railroad between Milwaukee and Portage City, delivered over to the Milwaukee and Minnesota Railroad Company, in pursuance of the order of the 18th of July aforesaid, and since operated by it, and also the rolling stock delivered to it with said road and appurtenances, have, since the delivery aforesaid, been sold under a decree of this court in the case of Frederick P. James against the said Milwaukee and Minnesota Railroad Company; and also claiming that said sale carried with it the rolling stock that had not been delivered by the Milwaukee and Saint Paul Railway Company to the Milwaukee and Minnesota Railroad Company, in pursuance of said order; and also showing to the court that there are at present two hostile organizations, each claiming to be the Milwaukee and Minnesota Railroad Company.

And it further appearing to the court that the Milwaukee and Minnesota Railroad Company executed the bonds, and paid the money required by said order, and that the road, between Milwaukee and Portage City was delivered, and also a portion of the rolling stock, as commanded by said order, but all the rolling stock that was on the whole of the LaCrosse and Milwaukee Railroad, or belonged or appertained thereto, when the receiver was appointed, was not delivered to the Milwaukee and Minnesota Railroad Company, in pursuance of said order, but a portion retained by the Milwaukee and Saint Paul Railway Company, claiming to be the owner thereof; and the court being of opinion that the sale under the decree of Frederick P. James against the Milwaukee and Minnesota Railroad Company did not carry the rolling stock which was retained, as aforesaid, by the Milwaukee and Saint Paul Railway Company, and not in possession of the Milwaukee and Minnesota Railroad Company at the time of the said decree and sale.

And on further consideration of the two organizations claiming to be the true Milwaukee and Minnesota Railroad Company, (there being no means before the court of ascertaining the legal organization of the company,) it is thereupon ordered by the court that the Milwaukee and Saint Paul Railway Company strictly comply with the said order of the 18th July, 1865, and deliver to the receiver hereinafter appointed, for the use of the Milwaukee and Minnesota Railroad Company, all the rolling stock that was on the whole of the LaCrosse and Milwaukee railroad, or belonged or appertained thereto when Hans Crocker, the receiver, was appointed, which had not been already delivered to said Minnesota Company in pursuance of said order.

It is further ordered that the Milwaukee and St. Paul Railway Company, within ten days after the service of this order, deliver to Cassius Fairchild, the Marshal of this District, the said rolling stock, who is hereby authorized to receive and retain the same until the further order of this court.

And it is further ordered that the attachment prayed for by the Milwaukee and Minnesota Railroad Company against the directors and officers of the Milwaukee and Saint Paul Railway Company be issued, but not served, if said rolling stock is delivered as herein ordered.

It is further ordered that the motion to strike from the files the said answer of the Milwaukee and Saint Paul Railway Company, be overruled.

David Davis,
A. G. Miller.

United States of America, } *ss.*
District of Wisconsin. }

I, Edward Kurtz, Clerk of the Circuit Court of the United States of America, for the District of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals and are correct transcripts therefrom, and of the whole thereof now on file, and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the City of Milwaukee in the said District of Wisconsin, this second day of December, in the [Seal.] year of our Lord one thousand eight hundred and sixty-seven, and of the Independence of the said United States the ninety-second.

Edward Kurtz, *Clerk.*

B.

James T. Soutter, Survivor, &c.
vs.
The La Crosse & Milwaukee Railroad Company, The Milwaukee & Minnesota Railroad Company, et al.
} In Circuit Court of the U. S. for the District of Wisconsin. In Equity.

District of Wisconsin, *ss.*

Joshua Stark of said District, being duly sworn, saith, that he is the Attorney of the Milwaukee and Minnesota Railroad Company, the defendant above named, and is familiar with the history of said company, and of the two hostile organizations, each claiming to be the Milwaukee and Minnesota Railroad Company: That he has in his possession the original evidences of the title under which said respective organizations claimed; that he has annexed hereto true copies of the documents showing the respective titles of the two parties, formerly claiming control over said company, to wit:

First: A commission signed by Wyman Spooner, acting Governor, daten May 2d, 1867, appointing Henry F. Prentiss, Orlando Alexander, and Joseph F. McMullen, inspectors of the annual election of directors of said company, under and in virtue of chapter 28, of the Private and Local Laws of Wisconsin, for the year 1862, the copy of which commission hereto annexed is marked Exhibit "A."

Second: The certificate of election of directors, held by said inspectors so appointed, dated May 29, 1867, and signed by said inspectors, Prentiss, Alexander, and McMullen, of which certificate a copy hereto annexed is marked Exhibit "B."

Third: A commission signed by Lucius Fairchild, Governor of Wisconsin, dated May 22d, 1867, revoking the appointment of Prentiss, Alexander, and McMullen, as inspectors of said election, and appointing J. J. Enos, H. S. Winsor, and S. A. White, inspectors in their place and stead, under said statute, (chapter 28, Local Laws of 1862,) of which commission a copy is hereto annexed marked Exhibit "C."

Fourth: A certificate of election of Directors of said Milwaukee and Minnesota Railroad Company, held by said last named inspectors, dated June 15th, 1867, and signed by said inspectors, Enos, Winsor, and White, of which certificate a copy is hereto annexed marked Exhibit "D."

Fifth: Proceedings of the pretended Board of Directors, appearing to be elected according to the certificate last above mentioned, at a meeting thereof held at the Continental Hotel in the City of Philadelphia, on the 20th day of December, A. D. 1867, of which a copy is hereunto annexed marked Exhibit "E."

Sixth: Proceedings of a meeeting of the Board of Directors of the Minnesota Railroad Company, held at 20

Broad street, in the City of New York, on the 4th day of January, 1868, of which proceedings a copy is hereto annexed marked Exhibit "F."

Deponent further saith, that he was present in Philadelphia on the 20th day of December, 1867, at the meeting of the Board of Directors held there on that day, and personally knows that at that time all controversy between the rival organizations of said Minnesota Railroad Company were settled and adjusted and that there is now but one Board or set of Directors claiming to be the Board of Directors of said company, and but one organization claiming or pretending to have the control or management of said company. That the Board of Directors of said company consists of the following persons: Aaron S. Bright of New Jersey, A. C. Gunnison, Wm. A. Guest, Wm. S. Carman, and Charles Jenkins of New York, A. G. Van Schaick of Chicago, and Moses S. Scott, Orlando Alexander, and Joshua Stark of Wisconsin; that Aaron S. Bright is President, A. C. Gunnison is Vice-President, Moses S. Scott, Secretary, and Joshua Stark is Attorney of said Company.

JOSHUA STARK.

Subscribed and sworn to before me, this 13th day of January, A. D. 1868.

G. M. WHORTON, *Notary Public.*

WILWAUKEE CO., WIS.

—

[EXHIBIT A.]

STATE OF WISCONSIN,
EXECUTIVE DEPARTMENT,

MADISON, *May 2d*, 1867.

Under and in pursuance of the authority in me vested by section 3 of chapter 28 of the Private and Local Laws of 1862, entitled "An act in relation to a certain Corporation election," I, Wyman Spooner, acting Governor of the State of Wisconsin, do hereby appoint Orlando Alexander, Henry Prentiss, and Joseph F. McMullen, of the City of Milwaukee, inspectors of the annual election of Directors of the Milwaukee and Minnesota Railroad Company, appointed by law to be held on the last

Wednesday of May, A. D. 1867, under the provision of said act.

[SEAL.] In testimony whereof I have hereunto subscribed my name and caused the great seal of the State of Wisconsin to be affixed.

Done at Madison, this second day of May, in the year of our Lord one thousand eight hundred and sixty-seven.

WYMAN SPOONER,
Acting Governor.

By the Governor:
THOS. S. ALLEN,
Secretary of State.

—

[EXHIBIT B.]

At the regular annual meeting of the stockholders of the Milwaukee and Minnesota Railroad Company for the election of directors of said company, duly notified and held, pursuant to the annexed notice, at the New Hall House, in the City of Milwaukee, and State of Wisconsin, on Wednesday, the 29th day of May, A. D. 1867,—the purpose thereof being to elect nine directors of said company,—the undersigned, Henry F. Prentiss, Orlando Alexander, and J. F. McMullen, duly appointed by the Governor of the State of Wisconsin inspectors for said election, having been duly sworn before entering upon their duties as such inspectors, do certify that the whole number of votes cast at said election was twelve thousand five hundred and three; that we, said inspectors, duly received and canvassed said votes; and the following named persons received each twelve thousand five hundred and three votes for said office of director, to wit: Aaron S. Bright, Charles Jenkins, William S. Carman, M. S. Scott, A. G. Van Schaick, W. A. Guest, Joshua Stark, A. C. Gunnison, and Orlando Alexander.

That the polls for said election were opened at ten o'clock in the forenoon and closed at four o'clock in the afternoon of that day, and that we, the said inspectors, kept an accurate list of the persons voting at said election, and that the voting was by ballot.

We do also certify and declare that, in accordance with the provisions of chapter 28 of the Private and Local Laws of this State, for the year 1862, the said Aaron S. Bright, Charles Jenkins, Wm. S. Carman, M. S. Scott, A. G. Van Schaick, Wm. A. Guest, Joshua Stark, A. C. Gunnison, and Orlando Alexander, the nine persons who received the highest number of votes at said election, were then and there duly elected directors of said company.

{Three U. S. Revenue 2 cent stamps, cancelled.}

Given under our hands at the City of Milwaukee, this 29th day of May, A. D. 1867.

Henry F. Prentiss,
O. Alexander,
J. F. McMullen,
} *Inspectors of said Election.*

[Exhibit C.]

State of Wisconsin,
Executive Department,
Madison, *May* 21, 1867.

Whereas, on the 2d day of May, A. D. 1867, Hon. Wyman Spooner, Lieutenant Governor of the State of Wisconsin, and at that time acting governor of each state, did appoint Orlando Alexander, Esq., Henry F. Prentiss, Esq., and Joseph F. McMullen, Esq., all of the City of Milwaukee, Wisconsin, inspectors of the annual election of the directors of the Milwaukee and Minnesota Railroad Company; and—

Whereas, it is represented by George Barnham, Esq., signing as President of said Milwaukee and Minnesota Railroad Company, that the gentlemen so appointed inspectors, as aforesaid, are either directly or indirectly interested in certain matters in dispute between the stockholders of said company, or are committed by their past action to certain views relating to said dispute, which representations seem to be at least partially confirmed by the records of the Secretary of State's office; and—

Whereas, it is the obvious intention of the law providing for the appointment of said Board of Inspectors, that the same should be entirely composed of gentlemen who have had no connection whatever with said road or its management, or with any matters pertaining thereto, and who have no interest, direct, contingent, or otherwise, in said road, or in its said management, to the end that the interests of all may be properly respected at said coming election:

Now, Therefore, I, Lucius Fairchild, Governer of the State of Wisconsin, in accordance with the advice and consent of Hon. Wyman Spooner, who made said appointments, do hereby revoke and annul the same, and by virtue of the authority in me vested, by section three, chapter 28, of the Private and Local Laws of 1862, hereby appoint as inspectors of the annual election of directors of the Milwaukee and Minnesota Railroad Company, in place of those heretofore appointed as aforesaid, J. J. Enos, Esq., of Watertown, H. S. Winsor, Esq., of the village of Elkhorn, and S. A. White, Esq., of the village of Whitewater, all of the State of Wisconsin.

Great Seal
of the State
of Wisconsin.

In testimony whereof, I have hereunto subscribed my name, and caused the Great Seal of the State of Wisconsin to be affixed.

Done at Madison this twenty-second day of May, in the year of our Lord one thousand eight hundred and sixty-seven.

Lucius Fairchild.

By the Governor:

E. A. Spencer, *Assistant Secretary of State.*

—

[Exhibit D.]

We, the undersigned, inspectors of an election for directors of the Milwaukee and Minnesota Railroad Company, appointed by the Governor to act as such inspectors, under chapter 28 of the Private and Local Laws of Wisconsin, of 1862, entitled "An act in relation to a certain corporation election," do hereby certify that we attended, in the City of Milwaukee, on the 29th day of May, 1867, at the place designated in the public notice given as required by law by the secretary of said company.

That we took the oath required by law to be taken as such inspectors, and thereafter received and decided upon such votes of stock as were offered to us, until all parties offering, and entitled to vote, had voted.

That we then counted the votes so cast, and found that twenty-four thousand nine hundred and forty-nine (24,949) votes or shares were cast or voted at the said election, of which fifteen thousand nine hundred and sixty-five votes or shares (15,965) were cast or voted for each of the following named persons, as directors of said company for the ensuing year, viz:

Samuel G. Lewis, William J. Howard, Samuel S. Moon, R. H. Lamborn, R. D. Barclay, George Tabor, W. P. Henszey, William W. Keefer, and Joseph Lesley, and eight thousand nine hundred and eighty-four (8,984) votes or shares for each of the following named persons, as directors of said company for the ensuing year, viz: Aaron S. Bright, Orlando Alexander, Charles Jenkins, William S. Carman, W. A. Guest, M. S. Scott, A. S. Van Schaick, Joshua Stark, and A. C. Gunnison.

We therefore certify that the following named persons, Samuel G. Lewis, William J. Howard, Samuel S. Moon, R. H. Lamborn, R. D. Barclay, George Tabor, W. P. Henszey, William W. Keefer, and Joseph Lesley, having received a majority of all the votes cast at such election, were duly elected directors of said company for the ensuing year.

Dated at Milwaukee this fifteenth day of June, A. D. 1867.

JACOB J. ENOS,
H. S. WINSOR,
L. A. WHITE,
Inspectors, &c.

[EXHIBIT E.]

PHILADELPHIA, *December* 20, 1867.

An adjourned meeting of the Board of Directors of the Milwaukee and Minnesota Railroad Company was held this date at the Continental Hotel in the City of Philadelphia. Present Messrs. Barclay, Henszey, Lewis, Moon, and Keefer, President.

Mr. Barclay offered the following resolution:

WHEREAS, no other action has been had under the resolution of this Board, passed August 19th, 1867, except the assignment of the decretal order of eighty-one thousand dollars; therefore—

Resolved, That the said resolution be rescinded, except so far as relates to the decretal orders of two hundred and thirty-seven thousand dollars and eighty-one thousand dollars.

On motion it was unanimously adopted.

The resignation of John P. Green as treasurer was presented, and on motion accepted.

The resignation of W. J. Howard as a director was presented, and on motion accepted.

Mr. A. S. Bright was nominated as director in place of W. J. Howard, resigned, and on motion elected.

The resignation of George Tabor as a director was presented, and on motion accepted.

Joshua Stark was nominated director in place of Geo. Tabor, resigned, and on motion elected.

Mr. Bright and Mr. Clark thereupon appeared and took their seats in the Board as directors.

The resignation of R. H. Lamborn as a director was presented, and on motion accepted.

The resignation of W. W. Keefer as president of the Board was presented, and on motion accepted.

A. S. Bright was nominated for president of the Board and Company, and on motion duly elected; and thereupon took the chair as president of the Company and Board.

The resignation of Joseph Lesley as a director was presented, and on motion accepted.

A. C. Gunnison was nominated director in place of R. H. Lamborn, resigned, and on motion elected.

William A. Guest was nominated director in place of Joseph Lesley, resigned, and on motion elected.

The resignation of W. W. Keefer as a director was presented, and on motion accepted.

William S. Carman was nominated director in place of W. W. Keefer, resigned, and on motion elected.

The resignation of William P. Henszey as a director was presented, and on motion accepted.

Charles Jenkins was nominated director in place of William P. Henszey, resigned, and on motion elected.

On motion the Board adjourned.

E. COOPER SHARPLEY, *Secretary.*

[EXHIBIT F.]

NEW YORK, *January* 4, 1868.

At a meeting of the Board of Directors of the Milwaukee and Minnesota Railroad Company, held at the office, No. 20 Broad street, the following named directors were present:

A. S. Bright, A. B. Gunnison, Wm. S. Carman, Chas. Jenkins, and Wm. A. Guest.

The President A. S. Bright in the chair, having stated the object of the meeting, William S. Carman was nominated and elected Secretary *pro tem.*

The resignation of R. D. Barclay as a director was presented, and on motion accepted.

Orlando Alexander was nominated in place of R. D. Barclay, resigned, and on motion elected.

The resignation of Samuel S. Moon as a director was presented, and on motion accepted.

Moses S. Scott was nominated in place of Samuel S. Moon, resigned, and on motion elected.

The resignation of Samuel G. Lewis as a director was presented, and on motion accepted.

A. G. Van Schaick was nominated in place of Samuel G. Lewis, resigned, and on motion elected.

The Board then adjourned.—January 4, 1868.

W. S. CARMAN, *Secretary pro tem.*

Supreme Court of the United States.

DECEMBER TERM, 1867.—ORIGINAL NO. 8.

MILWAUKEE AND MINNESOTA RAILROAD COMPANY.

AMENDMENT OF PETITION FOR MANDAMUS.

To the Honorable the Chief Justice and Justices of the Supreme Court of the United States:

The Milwaukee and Minnesota Railroad Company, a corporation created by and existing under the laws of the State of Wisconsin, for amendment of its petition for mandamus therein respectfully showeth:

That at a stated term of the circuit court of the United States for the district of Wisconsin, begun and held according to law, on the second Monday of September, being September 9, A. D. 1867, and on the 22d day of said term, to-wit, December 2, 1867, the following proceedings were had, to-wit:

In the case of James T. Soutter, Survivor, &c., *vs.* The La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company and others, came into court, the said Milwaukee and Minnesota Railroad Company by their counsel, and moved the court to proceed with the execution of the order of said court in said case, of the 18th of July, A. D. 1865, in pursuance of the mandamus of the Supreme Court served on the judges of said circuit court, in open court on a previous day of said term, and entered of record, and renewed the motion filed by said company, April 11, 1866, upon the records, affidavits, and proofs then submitted in support of said motion, for an attachment against the officers and directors of the Milwaukee and St. Paul Railway Company, for not complying with the aforesaid order of July 18, 1865, for the surrender and delivery of certain rolling-stock by said St. Paul Company to said Minnesota Company, and generally for such order and relief as was prayed by said Minnesota Company in and by its said motion filed in said circuit court April 11, 1866, of which a copy is hereto attached in an exhibit No. 1.

And also, on the same day came into court the said Milwaukee and St. Paul Railway Company, by their counsel, and presented and filed a supplemental answer to said motion of April 11, 1866, setting forth therein that, since the making of said order of July 18, 1865, a portion of said rolling-stock had been delivered to the said Minnesota Company and sold under the decree of said circuit court in the case of Frederick P. James against said Minnesota Company, and claiming that said sale carried with it the rolling-stock which had not yet been surrendered by the St. Paul Company to the said Minnesota Company. And also alleging that there then were two hostile organizations, each claiming to be the Milwaukee and Minnesota Railroad Company.

Whereupon said circuit court adjudged that the sale under the decree of Frederick P. James *vs.* The Milwaukee and Minnesota Railroad Company, did not carry the rolling-stock, which was retained, as aforesaid, by the Milwaukee and St. Paul Railway Company, and was not delivered to said Milwaukee and Minnesota Railroad Company before the filing of said motion on the 11th of April, A. D. 1866.

And in further consideration of the two organizations claiming to be the true Milwaukee and Minnesota Railroad Company, (there being no means before the court of ascertaining the legal organization of the company,) it was thereupon ordered by the court that the Milwaukee and St. Paul Railway Company strictly comply with the said order of July 18th, 1865, and deliver to the receiver to be therein appointed by said court, for the use of the Milwaukee and Minnesota Railroad Company, all the rolling-stock that was on the whole of the La Crosse and Milwaukee Railroad, or belonged or appertained thereto, when Hans Crocker, the receiver, was appointed, which had not been already delivered to said Minnesota Company in pursuance of said order.

It was further ordered by said court, that the Milwaukee and St. Paul Railway Company, within ten days after the service of said order, deliver to Cassius Fairchild, the marshal of the said district of Wisconsin, the said rolling-stock, who was thereby authorized to receive and retain the same until the further order of the court; and further, that the attachment prayed for by the Milwaukee and Minnesota Railroad Company against the officers and directors of the Milwaukee and St. Paul Railway Company be issued but not served, if said rolling-stock should be delivered as therein ordered.

Said order was duly served by the marshal of said district on said Milwaukee and St. Paul Railway Company, by delivering copies thereof to A. Cary, secretary and treasurer, to S. S. Merrill, director and general manager, and to John W. Cary, a director of said St. Paul Company, personally, on the 5th day of December, A. D. 1867, and a like copy was delivered by said marshal to Alexander Mitchell personally, the president of said St. Paul Company, on the 14th day of January, 1868.

All which appears by the certified copy of said order of December 2, 1867, and of the marshal's return of service thereof endorsed thereon, hereto annexed, marked Exhibit No. 2.

And the petitioners further represent, that all conflict in respect to the organization, management, and control of said Milwaukee and Minnesota Railroad Company having ceased subsequently to the date of said order of the said circuit court of December 2, 1867, and there being thus but one organization thereof, and the same having entire and unchallenged authority, as appears by the exhibit annexed to the original petition herein, marked "B," and here referred to, the said company, on the 13th day of January, 1868, presented the affidavit and copies of documents embraced in said Exhibit "B" to the honorable A. G. Miller, district judge of the United States for said district, and applied to him thereon for an order directing the receiver to deliver over said rolling-stock, so ordered to be delivered to him by said St. Paul Company.

Whereupon the said district judge minuted his refusal of said application upon the back of said affidavit and papers, in the words following, to-wit:

JANUARY 13, 1868.

Application is made to me at chambers upon these papers, for an order modifying the order made in pursuance of the mandamus, so as to discharge the receiver and order the rolling-stock to the Minnesota Company, which I decline to make, and refer the same to the Supreme Court.

A. G. MILLER, *District Judge.*

All which appears by the endorsement upon Exhibit "B," above referred to.

Your petitioners further allege that after service of said order of December 2, 1867, on the secretary, the general manager, and one of the directors, who was also the general attorney of the said St. Paul Company, to-wit:

On the 10th day of December, A. D. 1867, said St. Paul Company, by its said attorney, John W. Cary, delivered to said Cassius Fairchild, receiver, a paper writing, of which the following is a copy, to-wit:

CIRCUIT COURT OF UNITED STATES, DISTRICT OF WISCONSIN.

James T. Soutter, Survivor &c.,
vs.
La Crosse and Milwaukee
Railroad Company and others.

To Cassius Fairchild, Esq:

In pursuance of the order entered in this cause on the 2d day of December, 1867, directing the Milwaukee and St. Paul Railway Company to deliver to you certain rolling-stock therein named, the said Milwaukee and St. Paul Railway Company hereby offer to deliver to you, at such point on the line of their road as you may designate, the rolling-stock mentioned in said order, to wit:

Thirteen locomotive engines, Nos. 3, 4, 5, 8, 9, 13, 15, 17, 18, 19, 21, 26, and 27.

Nine passenger coaches, Nos. 2, 3, 4, 6, 8, 9, 10, 14, and 16.

Three baggage cars, Nos. 2, 3, and 5.

Forty-three flat cars, Nos. 15, 21, 31, 35, 43, 83, 89, 93, 101, 105, 129, 143, 145, 147, 151, 155, 159, 161, 163, 165, 169, 171, 173, 179, 181, 189, 191, 193, 195, 197, 199, 205, 209, 211, 215, 217, 225, 227, 229, 231, 233, 235, and 237.

Forty-four box cars, Nos. 14, 22, 70, 72, 86, 126, 152, 162, 190, 192, 194, 198, 204, 214, 220, 234, 240, 268, 286, 304, 310, 312, 320, 324, 326, 332, 340, 358, 360, 362, 368, 370, 372, 378, 384, 396, 406, 412, 416, 418, 422, 424, 436, and 442.

Dated Milwaukee, *December* 10, 1867.

Milwaukee and St. Paul Railway Company.
By John W. Cary, *Attorney.*

Your petitioners further allege, on information and belief, that on the 13th day of January, A. D. 1868, said receiver notified the officers of said Milwaukee and St. Paul Railway Company, to wit, its attorney, president, and general manager, that he was ready to receive said rolling-stock at the eastern terminus of the road of said St. Paul Company in the city of Milwaukee.

Your petitioners say that, although nearly three weeks have elapsed since the giving of said notice, and nearly two months since said order of December 2, 1867, was served on said St. Paul Company, and on all its directors who were within the State of Wisconsin at the time of such service, yet said Milwaukee and St. Paul Railway Company has not delivered, but refuses to deliver, a very large part of said rolling-stock to said receiver.

That of the locomotives embraced in said offer to deliver of December 10, 1867, five, numbered 18, 19, 21, 26, and 27, were then, and have ever since been and now are, in the State of Minnesota, and so, also, were and are, two of the passenger cars mentioned in said offer, numbered 6 and 10, and both said engines and cars have been used for months past in operating roads in Minnesota.

That on the 27th day of January, 1868, a portion of said rolling-stock was placed under the control of said receiver by said St. Paul Company, though remaining in his custody upon the track and ground in the possession of said company, of which the said receiver has furnished to your petitioners what he represented to be a complete list, with the location thereof, as follows:

At Union Depot.

Engines, Nos. 3, 8, 9, 17.

Passenger cars, Nos. 2, 3, 4, 8, 9, 14, 16.

Baggage cars, Nos. 3, 5, and 6 (rebuilt from 2.)

Flat cars, Nos. 35, 143, 151, 159, 165, 173, 179, 193, 195, 199, 217, 229, 235, and 237.

Box cars, Nos. 14, 72, 86, 152, 190, 192, 194, 198, 220, 240, 268, 286, 332, 340, 358, 368, 370, 372, 396, 406, 412, and 442.

At North Milwaukee.

Engines, Nos. 4, 5, 13, and 15.

Flat cars, Nos. 21, 31, 43, 89, 93, 101, 129, 147, 155, 161, 163, 181, 191, 197, 205, 225, 227, 231, 233, 83, 209.

Box cars, Nos. 22, 70, 126, 204, 214, 234, 304, 312, 320, 324, 326, 384, 418, 424, 436, 422, 360, 250, 274, 330, 28, 10, 218, 172, 60, 188, 62.

Your petitioners further allege that the writ of attachment directed to be issued by said order of December 2, 1867, was delivered to the marshal of said district, who was also the receiver of said rolling-stock, on the 16th day of January, A. D. 1868, with instructions to serve the same, unless the rolling-stock by said order required to be delivered to him by said St. Paul Company should be forthwith delivered. That on the 20th day of January, 1868, finding that said St. Paul Company had not yet delivered to the receiver any of the said rolling-stock, and that it denied that it was required to deliver any more or other stock than that described in its said offer of December 10, 1867, your petitioners caused a notice in writing, signed by their attorney, to be served on said marshal, receiver, specifically describing all the rolling-stock which, by said order, the said St. Paul Company was required to deliver to him, and directing that said writ of attachment in the hands of said marshal must be served unless said company should forthwith deliver to him all the rolling-stock described in said notice, of which notice and schedule of said rolling-stock a copy is hereto annexed, marked Exhibit No. 3, and is here referred to.

Your petitioners are informed and believe that a copy of said notice was forthwith delivered by said marshal, as receiver, to the president of said St. Paul Company. Yet, except the rolling-stock placed in the control of the said receiver on the 27th of January, as above stated, the said Milwaukee and St. Paul Railway Company, its officers and directors, have not delivered, but, on the contrary, refuse to deliver, any rolling stock under said order, save only the said five locomotives and two passenger cars, now in the State of Minnesota, which said company professes to be willing to deliver in the spring of 1868.

Your petitioners further allege, that said list of rolling-stock, in Exhibit No. 3, is made up from the affidavits and proofs submitted to the court on the hearing of said motion for attachment, and upon which said order of December 2, 1867, was based, including the original answer of the Milwaukee and St. Paul Railway Company, its officers and directors, filed April 13, 1866, in said circuit court in said case, and the supplemental answer hereinbefore referred to.

That the only proofs submitted to the court on said motion for attachment, by either party, describing and identifying said rolling-stock, delivered and not delivered, are embraced in the following extract from the affidavit of Erastus A. Patterson, made April 7, 1866, and submitted in support of said motion on the part of the Milwaukee and Minnesota Railroad Company, to wit:

"*District of Wisconsin:*

Erastus A. Patterson, being first duly sworn on oath, says, that he is now auditor of the Milwaukee and Minnesota Railroad Company, and that ever since the 1st day of May, A. D. 1862, up to February 1, 1866, he had been in the employment of the Milwaukee and St. Paul Railway Company.

He further says, that when the receiver took possession of the La Crosse and Milwaukee Railroad in this district, on the 11th day of June, 1860, the rolling-stock on said road was as follows, exclusive of forty box cars mentioned in the final order or decree of sale in this cause, viz:

Twenty-three locomotives, numbered from 1 to 21 inclusive, and numbers 26 to 27 inclusive.

Seventeen first-class passenger cars, numbered from 1 to 4 inclusive, and from 6 to 18 inclusive.

Nine second-class and baggage cars, numbered from 1 to 9 inclusive.

Three mail and express cars, numbered from 1 to 3 inclusive.

Six caboose cars, numbered from 1 to 6 inclusive.

One hundred and eighty-two box freight cars, numbered even numbers from 2 to 328 inclusive, and from 410 to 444 inclusive.

One hundred and twenty platform cars, numbered odd numbers from 1 to 239 inclusive.

Forty-eight hand cars.

Six rubble cars.

Four wood cars.

Two snow-ploughs.

This affiant further says, that the rolling-stock purchased and built by the receiver while in possession of said road, prior to the final decree or order of sale in this cause, was as follows, viz:

Eight locomotives, numbered 22 to 25 inclusive, and numbered 28 to 31 inclusive.

Two passenger cars, numbered 19 and 20 inclusive.

Two hundred and twenty-eight box freight cars, numbered even numbers from 446 to 900 inclusive.

One wrecking and pile-driving car.

That since the demand made by the Milwaukee and Minnesota Railroad Company on the said receiver, Hans Crocker, and the Milwaukee and St. Paul Railway Company, in January last, for possession of that portion of said rolling-stock to which said Milwaukee and Minnesota Railroad Company is or claims to be entitled under the orders and decrees in this cause, said receiver and said Milwaukee and St. Paul Railway Company have delivered to the Milwaukee and Minnesota Railroad Company the following rolling-stock, viz:

Fourteen locomotives, numbered 1, 2, 7, 10, 11, 12, 14, 16, 20, 22, 24, 25, 29, and 30.

Eight passenger cars, numbered 1, 7, 13, 15, 17, 18, 19, and 20.

Four baggage cars, numbered 1, 4, 6, and 7.

Three mail and express cars, numbered 1, 2, and 3.

Four caboose cars, numbered 2, 5, 102, and 170.

Eighteen platform cars, numbered 151, 143, 93, 161, 101, 109, 137, 119, 83, 23, 117, 77, 149, 97, 121, 151, 3, and 223.

One hundred and fifty box cars, numbered 84, 154, 60, 36, 10, 134, 138, 6, 242, 202, 292, 242, 390, 318, 456, 496, 494, 492, 446, 478, 452, 480, 466, 458, 450, 403, 468, 548, 566, 592, 512, 546, 506, 514, 524, 574, 588, 562, 516, 564, 560, 568, 531, 572, 576, 584, 590, 580, 554, 582, 552, 558, 586, 598, 670, 626, 622, 686, 688, 628, 656, 654, 616, 682. 646, 676, 620, 610, 642, 608, 630, 606, 666, 698, 696, 690, 614, 602, 658, 674, 696, 624, 662, 660, 684, 650, 678, 618, 600, 672, 664, 726, 730, 760, 712, 766, 756, 798, 710, 790, 774, 762, 782, 704, 740, 796, 722, 716, 754, 758, 742, 768, 738, 724, 776, 750, 708, 700, 748, 718, 702, 720, 746, 786, 752, 82, 810. 800, 850, 818, 874, 858, 842, 804, 854, 820, 808, 844, 802, 838, 828, 806, 876, 848, 856, 822, 338, 482.

All of which rolling-stock, so returned and delivered to said Milwaukee and Minnesota Railroad Company, is parcel of the rolling-stock on the said road when said receiver was appointed, or that which was purchased or built by said receiver."

And in the following extract from the original answer of the Milwaukee and St. Paul Railway Company, and its officers and directors, including Alexander Mitchell, president, S. S. Merrill, general manager, A. Cary, secretary and treasurer, and John W. Cary, director, to the said motion and application of the Minnesota Company for an attachment as for contempt, filed April 11, 1866, as before stated, to wit:

"Your respondents further show, that of the rolling-stock which was on the road on the 11th day of June, 1860, of which the receiver took possession, there was in existence, and in the possession of the Milwaukee and St. Paul Railway Company, on the 4th day of January, A. D. 1866, the following, to wit: Engines, 23; box cars, 212; flat cars, 77; baggage cars, 6; mail and express cars, 3; passenger coaches, 15.

That of this stock the Milwaukee and St. Paul Railway Company, on the said 29th day of January, A. D. 1866, and as soon thereafter as practicable, at different times, delivered to the Milwaukee and Minnesota Railroad Company the following, to wit: Engines, 9; box cars, 10; flat cars, 24; baggage cars, 3; mail and express cars, 3; passenger cars, 6."

That said answer was verified on the 12th day of April, 1866, by the oaths of Alexander Mitchell, N. A. Cowdry, S. S. Merrill, and John W. Cary, all of whom then were, and still are, directors of said St. Paul Company.

And your petitioners allege, that neither in their said original, nor in their said supplemental answer to said application for attachment, nor in any affidavits, or other papers or proofs submitted to the court in opposition to said application, was it ever alleged, claimed, or pretended, by or on behalf of said St. Paul Company, that it ever delivered to said Milwaukee and Minnesota Company, prior to said order of December 2, 1867, any other or greater amount of the rolling-stock which was on the La Crosse and Milwaukee Railroad when the receiver took possession, in June, 1860, than is stated in their answer as above herein quoted.

And your petitioner claims and insists that at the time said order of December 2, 1867, was made, there remained in the hands of said St. Paul Company, of said rolling-stock, which they were by that order required to deliver, as appeared from their own statement in their said answer, 14 locomotives, 202 box cars, 53 flat cars, 3 baggage cars, and 9 passenger cars, of which they now refuse to deliver a very large portion.

Your petitioners further allege, that of the forty-nine box cars, placed under the control of the receiver, on the 27th day of January, 1868, as before stated, eleven are part of the "40 box-cars" which were adjudged to belong to the Western Division of the La Crosse railroad in January, 1862, and two had been delivered before the application for attachment was made, making thirteen that are not embraced in or covered by the order of December 2, 1867; and of the 35 flat-cars so delivered to said receiver, six were delivered before the application for attachment was filed, in April, 1866, and are therefore not embraced in said order; so that out of 202 box-cars, the said St. Paul Company has delivered under said order only 36, retaining 166, which it refuses to deliver; and out of 53 flat-cars said company has delivered only 29, retaining 24, which it refuses to deliver; and that said cars so retained are of the value of more than one hundred thousand dollars; and besides these cars, there are, as before stated, five locomotives and two passenger cars, of the value of nearly or quite one hundred thousand dollars, which have been removed by said St. Paul Company out of the jurisdiction of said circuit court into the State of Minnesota, where they still remain.

Your petitioners further allege that, although said St. Paul Company, its officers and directors, are so openly violating said order of December 2, 1867, not one of said officers or directors is held in custody or restrained of his liberty in virtue of said writ of attachment, which is yet in the hands of the marshal of said district of Wisconsin, with instructions to serve the same.

Whereupon, your petitioners pray that a writ of mandamus may be issued out of and under the seal of this court, to be directed to the Judges of the circuit court of the United States for the district of Wisconsin, strictly commanding them in said circuit court to order the said rolling stock, as aforesaid, to be withdrawn from the hands of the receiver and delivered to the said Milwaukee and Minnesota Railroad Company; or, if your honors shall be of opinion that the precise relief hereby prayed ought not to be granted, that your honors will issue a writ of mandamus to the said judges of the said circuit court, in such form as your petitioners may be entitled, to compel said circuit court to enforce and give complete execution to said order of July 18, 1865, as against the said Milwaukee and St. Paul Railway Company, its officers and agents, and any and all other persons.

And that your honors will order that a writ of attachment issue out of and under the seal of this honorable court, to arrest Alexander Mitchell, S. S. Merrill, A. Cary, and John W. Cary, directors and officers of said Milwaukee and St. Paul Railway Company, for contempt of this court, in this, that they have knowingly and willfully, for more than ten days after service on said St. Paul Railway Company, and on them personally, of said order of the circuit court of the United States for the district of Wisconsin, made December 2, 1867, under and in obedience to the mandamus issued by this court in that behalf to said circuit court, neglected and refused to deliver to Cassius Fairchild, the receiver appointed by said circuit court, a large part of the rolling stock mentioned in said order of December 2, 1867, and thereby required to be delivered, in direct violation of said order, and in contempt of this court.

Or that your honors will grant such other or different writ, proceeding, or relief, to secure to your petitioners the benefit of said orders of July 18, 1865, and of December 2, 1867, made by said circuit court, and of said mandamus issued by this court, in obedience to which said last-named order was made, as your petitioners may be entitled to, and as shall be agreeable to equity and good conscience.

THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY,
By C. CUSHING, *Counsel.*

Exhibit No. 1.

MOTION FOR ATTACHMENT FILED IN CIRCUIT COURT FOR DISTRICT OF WISCONSIN, APRIL 11, 1866.

Circuit Court of the United States for the District of Wisconsin, in Equity.

James T. Soutter, Survivór, &c.,
vs.
The La Crosse and Milwaukee Railroad Company, and others, Defendants.

Here in court comes the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, by Matt. H. Carpenter, its solicitor, and on the record, proofs, and papers on file in this cause, and on foregoing affidavits and papers hereto attached, moves the court now here for an order of said court herein directing attachment to issue out of, under the seal of this court, in due form of law, or in such form as the said court shall by said order direct, against Alexander Mitchell, president of the Milwaukee and St. Paul Railway Company; S. S. Merrill, manager of said company; A. Reasoner, superintendent of said company; A. Cary, secretary and treasurer of said company, and Washington Hunt, W. S. Gurnee, Frederick P. James, John W. Cary, Selah Chamberlain, Russell Sage, N. A. Cowdry, C. B. Wesley, Horace Galpin, David M. Hughes, and Daniel Wells, Jr., directors of said company; and that such proceedings may be thereupon had as are agreeable to equity and good conscience, to convict said officers and directors of contempt of this court, for disobedience to and refusal to comply with the order of said court, as shown in the annexed and foregoing papers; and that said officers and directors may be held in close custody until they shall obey said order, by delivering possession of said rolling-stock under and according to the said order of said court, a certified copy of which is part of said document "A," attached to the foregoing affidavit of Nicholas Murray; and for such other and further or different relief in the premises as shall be agreeable to equity and good conscience.

The said Milwaukee and Minnesota Railroad Company further moves said court for an order to be made in this cause, sequestrating the stock, railroad, property, real and personal, assets, and effects of the said Milwaukee and St. Paul Railway Company, and for the appointment of sequestrators to receive, hold, and manage the same, until said last-named company, its officers, and directors, shall comply with the said order of this court in the cause hereinbefore mentioned, and until said company shall pay, or cause to be paid, all damages to this defendant arising from the said disobedience of said order by said last-named company, its officers and directors, or until such other time as this court shall direct; and that it may be referred to a master of this court to ascertain and report to said court the amount of such damageso sustained by this defendant; and that this defendant may have such other and further or different relief in the premises as shall be agreeable to equity and good conscience; and that the said officers and directors of said company may be adjudged and decreed by said court to be personally liable for the damages sustained by this defendant in the premises; and that they may be personally ordered and decreed to pay the same when ascertained as aforesaid; and that they may be committed until the same be ascertained and paid, or that this defendant may have such other and further relief in the premises as the nature of its case may require, and as shall be agreeable to equity and good conscience.

Matt. H. Carpenter,
Solicitor for the Milwaukee and Minnesota Railroad Company, Defendant.

I accept service of this motion and papers for next Wednesday morning, April 7, 1866.

John W. Cary,
Solicitor for M. and St. P. R. W. Co.

Filed *April* 11, 1866.

Exhibit No. 2.

COPY OF ORDER OF CIRCUIT COURT OF DECEMBER 2, 1867, AND OF MARSHAL'S RETURN OF SERVICE.

UNITED STATES OF AMERICA,
District of Wisconsin, } *ss.*

At a stated term of the circuit court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the ninth day) of September, A. D. 1867—present, the Honorable Andrew G. Miller, District Judge, presiding.

On the twenty-second day of said term, to wit, on the second day of December, A. D. 1867, the following proceedings were had, to wit:

JAMES T. SOUTTER, Survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY, *et als.* } In Equity.

This day came into court the Milwaukee and Minnesota Railroad Company, by their counsel, and moved the court to proceed with the execution of the order of this court in this case of the 18th of July, 1865, in pursuance of the mandamus of the Supreme Court, served on the judges of this court in open court, on a previous day of this term, and entered of record, and for an attachment against the officers and directors of the Milwaukee and St. Paul Railway Company for not complying with the aforesaid order.

And also came the Milwaukee and St. Paul Railway Company, by their counsel, and presented an answer, herein filed, against the issuance of said attachment, setting up matter subsequent in date to the aforesaid order, by which it appeared that the railroad between Milwaukee and Portage City, delivered over to the Milwaukee and Minnesota Railroad Company, in pursuance of the order of the 18th of July aforesaid, and since operated by it, and also the rolling-stock delivered to it with said road and appurtenances, have, since the delivery aforesaid, been sold under a decree of this court in the case of Frederick P. James against the said Milwaukee and Minnesota Railroad Company; and also claiming that said sale carried with it the rolling-stock that had not been delivered by the Milwaukee and St. Paul Railway Company to the Milwaukee and Minnesota Railroad Company, in pursuance of said order; and also showing to the court that there are at present two hostile organizations, each claiming to be the Milwaukee and Minnesota Railroad Company.

And it further appearing to the court that the Milwaukee and Minnesota Railroad Company executed the bonds, and paid the money required by said order, and that the road between Milwaukee and Portage City was delivered, and also a portion of the rolling-stock, as commanded by said order, but all the rolling stock that was on the whole of the La Crosse and Milwaukee Railroad, or belonged or appertained thereto when the receiver was appointed, was not delivered to the Milwaukee and Minnesota Railroad Company, in pursuance of said order, but a portion retained by the Milwaukee and St. Paul Railway Company, claiming to be the owner thereof; and the court being of opinion that the sale under the decree of Frederick P. James against the Milwaukee and Minnesota Railroad Company did not carry the rolling-stock which was retained, as aforesaid, by the Milwaukee and St. Paul Railway Company, and not in possession of the Milwaukee and Minnesota Railroad Company at the time of the said decree and sale.

And on further consideration of the two organizations claiming to be the true Milwaukee and Minnesota Railroad Company, (there being no means before the court of ascertaining the legal organization of the company,) it is, therefore, ordered by the court that the Milwaukee and St. Paul Railway Company strictly comply with the said order of the 18th July, 1865, and deliver to the receiver hereinafter appointed, for the use of the Milwaukee and Minnesota Railroad Company, all the rolling-stock that was on the whole of the La Crosse and Milwaukee Railroad, or belonged or appertained thereto when Hans Crocker, the receiver, was appointed, which had not been already delivered to said Minnesota Company, in pursuance of said order.

It is further ordered that the Milwaukee and St. Paul Railway Company, within ten days after the service of this order, deliver to Cassius Fairchild, the marshal of this district, the said rolling-stock, who is hereby authorized to receive and retain the same until the further order of this court.

And it is further ordered that the attachment prayed for by the Milwaukee and Minnesota Railroad Company against the directors and officers of the Milwaukee and St. Paul Railway Company be issued, but not served, if said rolling-stock is delivered, as herein ordered.

It is further ordered that the motion to strike from the files the said answer of the Milwaukee and St Paul Railway Company be overruled.

DAVID DAVIS,
A. G. MILLER.

Served the within order upon A. Cary, secretary and treasurer, John W. Cary, a director, and S. S. Merrill, a director and general manager of the Milwaukee and St. Paul Railway Company, by delivering to each of them, personally, a copy thereof, this 5th day of December, A. D. 1867.

CASSIUS FAIRCHILD,
U. S. Marshal.

Served on Alexander Mitchell, president of the Milwaukee and St. Paul Railway Company, by delivering to him, personally, a copy of this order, this 14th day of January, A. D. 1868.

CASSIUS FAIRCHILD,
U. S. Marshal.

UNITED STATES OF AMERICA, }
District of Wisconsin, } *ss:*

I, Edward Kurtz, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof now on file, and remaining on record in my office.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this twenty-ninth day of January, in the year of our Lord one thousand eight hundred and sixty eight, and of the Independence of the United States the ninety-second.

[SEAL.] EDWARD KURTZ, *Clerk.*

Exhibit No. 3.

To Cassius Fairchild, Esq., U. S. Marshal and Receiver of Rolling Stock, under order of the Circuit Court of the United States, of December 2, 1867, in case of Soutter & Co. vs. La Crosse and Milwaukee Railroad Company, and others.

The Milwaukee and Minnesota Railroad Company, for whose use the Milwaukee and St. Paul Railway Company were, by the above-mentioned order, required to deliver to you certain rolling-stock, referred to in said order, claim and insist that all the rolling-stock formerly belonging to the La Crosse and Milwaukee Railroad Company, and below described, is covered by and embraced in said order, and must be delivered to you by the Milwaukee and St. Paul Railway Company, in obedience to said order, forthwith, or the writ of attachment in your hands, against the officers and directors of said company, must be served by taking the persons therein named into custody, to answer for contempt of court, to wit:

14 Locomotives....	Fourteen locomotive engines, numbered 3, 4, 5, 6, 8, 9, 13, 15, 17, 18, 19, 21, 26, and 27.
11 Passenger Cars.	Eleven passenger coaches (first-class,) numbers 2, 3, 4, 6, 8, 9, 10, 11, 12, 14, and 15.
4 Baggage Cars..	Four second-class and baggage cars, numbers 2, 3, 5, and 8.
4 Caboose Cars...	Four caboose cars, numbers 1, 3, 4, and 6.
103 Platform Cars..	One hundred and three platform cars, numbered 7, 15, 21, 25, 27, 29, 31, 35, 49, 57, 85, 89, 95, 105, 107, 129, 141, 145, 147, 153, 155, 157, 159, 163, 165, 167, 169, 171, 173, 175, 177, 179, 181, 183, 185, 187, 189, 191, 193, 195, 197, 199, 201, 203, 205, 207, 209, 211, 213. 215, 217, 219, 221, 225, 227, 229, 231, 233, 235, 237, 239.

Forty-three of these platform cars are claimed by the St Paul Company to have been changed into box cars, and may be so delivered.

One hundred and sixty-nine box freight cars, (not including those above referred to, altered from platform cars,) numbers 2, 4, 8, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50, 52, 54, 56, 58, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 86, 88, 90, 92, 94, 96, 98, 100, 104, 106, 108, 110, 112, 114, 116, 118, 120, 122, 124, 126, 128, 130, 132, 136, 140, 142, 144, 146, 148, 150, 152, 156, 158, 160, 162, 164, 166, 168, 172, 174, 176, 178, 180, 182, 184, 186, 188, 90, 192, 194, 196, 198, 200, 204, 206, 208, 210, 212, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 236, 238, 240, 244, 246, 248, 250, 254, 256, 258, 260, 262, 264, 266, 268, 270, 272, 274, 276, 278, 280, 282, 284, 286, 288, 290, 294, 296, 298, 300, 302, 304, 306, 308, 310, 312, 314, 316, 320, 322, 324, 326, 410, 412, 414, 416, 4 8, 420, 422, 424, 426, 428, 430, 432, 434, 436, 438, 440, 442, 444.

The St. Paul Company claim that six of those box cars have been converted into caboose cars; if they may be so delivered.

48 Hand Cars—Forty-eight hand cars.
6 Rubble Cars—Six rubble cars.
4 Wood Cars—Four wood cars.
2 Snow Ploughs—Two snow ploughs.

Dated MILWAUKEE, *January* 20, 1868.

MILWAUKEE AND MINNESOTA RAILROAD COMPANY,
By JOSHUA STARK, *Attorney*.

quired to deliver to you certain rolling-stock, [illegible] and insist that all the rolling-stock, [illegible] Milwaukee Railroad Company, and [illegible] in said order, and must be delivered [illegible] way Company, in obedience to said order [illegible] in your hands, against the officers and directors of said company, must be enforced by taking the persons therein named into custody, to answer for contempt of court, to wit:

14 Locomotives....	Fourteen locomotive engines, numbered 3, 4, 5, 6, 8, 9, 12, 13, 17, 18, 19, 21, 26, and 27.
11 Passenger Cars.	Eleven passenger coaches, first class, numbers 2, 3, 4, 6, 8, 9, 1[illegible], 11, 12, 13, and 15.
4 Baggage Cars..	Four second class and baggage cars, numbers 4, 5, 6, and 8.
[illegible] Cars..	[illegible]
[illegible] Cars..	[illegible]

[illegible]

Dated Milwaukee, January 30, 1860.

Milwaukee and Minnesota Railroad Company,
By [illegible], Attorney.

No 10 - Original 2

Mr. Justice Cliffo

Supreme Court District of Columbia.

THE UNITED STATES,

ON THE RELATION OF

WILLIAM H. DE GROOT

VS.

HUGH McCULLOCH,

Secretary of the Treasury.

Deny Denied

INDEX.

		Page
Petition		3–11
Appendix—Exhibit	**A**	12–15
do.	**B**	16
do.	**C**	17–19
do.	**D**	20
do.	**E**	20–21
do.	**F**	21–23
do.	**G**	23–25
do.	**H**	25–27
do.	**I**	27–28
do.	**K**	28–32
do.	**L**	33–41
do.	**M**	42
do.	**N**	42–47

Supreme Court District of Columbia.

THE UNITED STATES
on the relation of
WILLIAM H. DE GROOT
vs.
HUGH B. MCCULLOCH,
Secretary of the Treas'y.

To the Hon. the Judges of the Supreme Court of the District of Columbia:

The Petition of William H. De Groot, a citizen of the State of New-York, doing business at 142 Fulton street, New York city, respectfully showeth:

That on or about the 23d day of January, 1854, William H. Degges and Francis H. Smith, entered into a written contract with the United States, signed by said Degges & Smith on their part, and by Captain Montgomery C. Meigs for and on behalf of the United States, he having due authority to contract for the United States, by which said Degges & Smith were to furnish for the construction of the Washington aqueduct, the said Meigs then having charge of the construction thereof, not less than 25,000,000 and not exceeding 40,000,000 of brick, to be paid for by the United States, at the rate of eight dollars and seventy-five cents ($8 75) per thousand.

A copy of said contract is hereto annexed as a part of this petition, and marked A.

Your petitioner also states that Columbus Alexander and Alexander H. Mechlin became sureties for the performance of said contract on the part of said Degges & Smith. A copy of their undertaking is also hereto annexed as a part of this petition, marked B.

Your petitioner also states that said sureties, Alexander & Mechlin, were afterwards notified and required by the United

States to proceed with the performance of said contract, the said principals, Degges & Smith, having neglected to do so. And at the request of the United States, the said Mechlin & Alexander assumed and undertook the performance of said contract.

Your petitioner also states that afterwards, on or about the 9th of May, 1855, the said Alexander & Mechlin, upon whom the performance of said contract had devolved, and who were then the real principals therein, entered into an arrangement and contract with your petitioner, by which your petitioner agreed to proceed with and perform the said contract, and was to be paid therefor by the United States, as was stipulated therein, which said arrangement and substitution of your petitioner as the party to perform said contract, was with the express consent of the said M. C. Meigs, acting for and on behalf of the United States. And the said Alexander & Mechlin were paid a valuable consideration therefor by your petitioner, and your petitioner agreed to indemnify the said Alexander & Mechlin against all damages and claims by the United States for non-performance of said contract; a copy of said contract with said Alexander & Mechlin is also hereto annexed as part of this petition, marked C.

Your petitioner also states that he gave to the said Mechlin & Alexander a deed of trust, as was required in said contract with them, to further secure to them the performance of said contract, and that he became, and was thereafter, the real party to be benefited by the performance of said contract, and to become answerable for its non-performance, and that he was accepted and treated by said M. C. Meigs, for and on behalf of the United States, as the real party in the contract after being so substituted as such, and was and is legally, justly, and equitably entitled to be so considered by the United States and by this court. And in performance of this arrangement said Mechlin & Alexander, who were then recognized as principals in said contract by the United States, also gave your petitioner, who was thus interested as the real party, a power of attorney in writing, as required by said contract; a copy of which is also annexed as a part of this petition, marked D, and which was approved by said M. C. Meigs.

Your petitioner also states that afterwards your petitioner proceeded, at the instance and with the assent of the United States, as the real party, with the performance of the said contract, and in order to make and deliver said brick as fast as they might be required for said work, and at the rate of 60,000 per day, purchased a large and valuable brick-yard, called Hunting Park, containing about fifty acres of land, with buildings and improvements thereon, and also purchased a steam engine, horses, mules, machinery, and other property, and proceeded to make roads, kilns, and other preparations for the making and delivery of said brick, and expended in so doing a large sum of money, to wit: over thirty-three thousand dollars, as will appear by the proof and vouchers presented to the Secretary of War on the hearing before him, as hereinafter stated.

Your petitioner also states that while his works were being constructed, he purchased and delivered to the United States, in order to fulfil said contract, all the brick required during that time, for said work, for which he was compelled to pay an extra price, and more than the contract price which he was to receive from the United States.

Your petitioner also states that after getting his brick-yard and machinery in operation, so as to comply with all the requirements of said contract, and so he could make 60,000 brick per day, he made and delivered said brick as fast as they were required for the work on said aqueduct, and continued to fulfil all the requirements of said contract, and was at all times able, ready, and willing to do so, and has fulfilled and performed, and was at all times able, ready and willing to fulfil and perform said contract, and actually made and delivered a large quantity of brick to the said Meigs, acting for and on behalf of the United States, under said contract, for the construction of said aqueduct, and as fast as they were required.

And that by the aid of the machinery and property which had been prepared for manufacturing said brick, your petitioner could then make and deliver the same at the rate of 60,000 per day, and at a cost of from four to four dollars and seventy-five cents per thousand, and could make a clear profit, in the manufacture and delivery of said brick, of four dollars and over per thousand, under said contract, clear of all expenses in the manufacture and delivery thereof.

Your petitioner further states that in 1856, Congress, in view of making some change in relation to said aqueduct, failed to make any appropriation to carry on said work for the ensuing year, for which reason the work for a time suspended, but did make an appropriation of two hundred and fifty thousand dollars "for securing the work already done, and for paying existing liabilities for the Washington aqueduct," of which sum, as your petitioner is informed and believes, only about eight thousand dollars was expended, when Congress, on the 3d March, 1857, at the instance of said Meigs, as your petitioner is informed and believes, passed a joint resolution, a copy of which is also annexed as a part of this petition, marked E. And at the same session Congress made an appropriation for the continuation of the work on said aqueduct.

Your petitioner further states that he notified said Meigs that he was ready and willing to go on with, and fulfil said contract, and to make and deliver said brick at the rate of 60,000 per day, or as fast as they should be required. But said Meigs desired and requested your petitioner to surrender the said brick-yard, brick, machinery, works, and property to the United States, and assured your petitioner that under said resolution he would be allowed and paid all he could obtain if he went on and fulfilled the contract, including the profits on the brick to be made and his expenditures, and would also be allowed and paid for the property surrendered to the United States at its cost; and he desired this in order that the whole work should be under the control of the United States. That relying upon the statements of the agent of the United States, and in order to do as he deemed best for the interest of both parties, your petitioner very reluctantly consented to this arrangement.

Your petitioner further states that he did accordingly surrender to the United States the said brick, brick-yard, buildings, steam engines, machinery, teams, tools, and property of every kind on said premises, and used in manufactering said brick, which was the property of your petitioner.

That Mechlin & Alexander and one Henry Kellogg (who had once claimed some interest under a later power of attorney from them, but whose claim had been settled against him) joined your petitioner in making said surrender in order to make it formal and complete upon its face, as appears by a copy thereof, herewith filed, marked "Exhibit F." But your petitioner expressly states that they had no interest whatever in the property before mentioned, so surrendered by your petitioner to the United States. And which as your petitioner believes and charges was then worth as much as it had cost your petitioner, and could have been sold for that sum, or more, at private sale, if it had not been required and taken by the United States, as aforesaid.

Your petitioner also surrendered to the United States the bricks on hand, undelivered in said yard. The whole entire property was, under the arrangement aforesaid, surrendered to the United States, and has ever since been, and still is, used and occupied by the United States, as appears by Exhibit G, hereto annexed.

Your petitioner at the same time, as required by said resolution, cancelled said contract. The surrender of said property and cancellation of said contract, being by said resolution made conditions precedent to the payment to him of "all damages, losses and liabilities" to which your petitioner might be entitled under said contract, as provided for in said resolution of March 3d, 1857, and the same being fully performed as shown in "Exhibit H."

Your petitioner further states that the then Secretary of the Treasury, in his adjustment of the claims, damages, losses, and liabilities, under said resolution of March 3d, 1857, refused to recognize your petitioner as a party, notwithstanding he had been required to surrender his property to the United States, and cancel the said contract, and the said Secretary allowed a certain sum to said Alexander & Mechlin, out of which, after retaining what they claimed, they paid over to your petitioner seven thousand five hundred and seventy-six dollars, ($7,576,) and no more.

Your petitioner further states that, being without any other remedy, he applied to Congress for relief, and on the 15th of June, 1860, Congress pased a joint resolution for the relief of your petitioner, a copy of which is hereto annexed as a part of this petition, marked Exhibit I.

Your petitioner further states, that under said last mentioned resolution, the then Secretary of War took upon himself to hear and determine the claim of your petitioner, and after a long, careful, and critical examination of the case, and of all the evidence produced by both parties, and after hearing the proofs and allegations of the parties, the Secretary of War adjudged and determined that there was due, over and above all payments and offsets, to your petitioner the sum of one hundred and and nineteen thousand two hundred and thirty-four dollars and forty-six cents, ($119,234 46,) which award and adjudication was made and published on the 17th day of August, 1860, and said amount still remains due and owing to your petitioner; and no part of the same has ever been paid. A copy of said award is hereto annexed as a part of this petition, marked K, and the original will be produced, if required.

Your petitioner further states, that said award and adjudication was fairly made, and after a full hearing and careful consideration of the case, and is not for any more (but in truth less) than the amount that was then justly and equitably due and owing to your petitioner, from the United States, over and above all counter claims against, and payments made to your petitioner.

Your petitioner further sheweth that notwithstanding the generality and looseness of language in said award, there was in fact, no allowance made therein to your petitioner for "the value of the real estate on which the brick-yard was located, and the money involved in the purchase of it." On the contrary, your petitioner sheweth that the award to him of the sum of $29,323 22, part and parcel of said award is based alone, (as manifestly appears therein) on the items stated in the schedule of expenditures exhibited to the Secretary of War by your petitioner, and on which your petitioner distinctly avers there was no item claimed for the purchase money or value of said real estate, as will more fully and clearly appear by the annexed certified copy of said schedule herewith filed, marked Exhibit L, and prayed to be taken as part hereof.

Your orator is advised and charges that the reference made in said award to the items of said schedule, and the allowance by the Secretary of War, in one article of his award, of the exact sum of all the items in said schedule, virtually incorporates said schedule into said award, and is conclusive to show the character of each and every item allowed and awarded in the aforesaid sum of $29,323 22. Your petitioner further sheweth that having under the mistaken advice of counsel, filed his petition to enforce said award in the Court of Claims, and his said counsel having omitted to file a copy of said schedule in said Court of Claims, which was material and proper, to show the items allowed in said award, and which composed the said sum of $29,323 22, his said petition was dismissed by the Court of Claims, and the said dismissal was affirmed by the Supreme Court of the United States, for want of jurisdiction in the Court of Claims, because of the legal effect of a resolution passed by Congress, subsequently to the rendition of said last award, as appears by the annexed copies of said resolution, and the opinion of the Supreme Court of the United States, herewith filed, and marked Exhibits M and N.

Your petitioner sheweth that the Supreme Court of the United States decided said appeal upon the distinct ground of a want of jurisdiction in the Court of Claims to consider the same, and very clearly intimate an opinion that the case might be different in a court of more extended jurisdiction.

Your petitioner is advised, and charges that so much of the opinion of said Supreme Court as relates to the merits of said award, must be considered as *obiter dictum* of the learned justice by whom said opinion was delivered, and therefore not concluding that court or any other in any new proceeding based on said award, but your petitioner sheweth that in the state of the record before the Supreme Court, there was, as your orator believes and charges, a total absence of the schedule referred to in said award, and which if filed, or if the court's attention had been called to it, would have clearly shown that the Secretary of War did not exceed his jurisdiction under the resolution referring the claim to him, and that even if he did exceed his jurisdiction and authority in allowing to your orator " the value of the real estate on which the brick-yard was located, and the money involved in its purchase," the said allowance would not vitiate the other portions of said award from which by means of said schedule it could be clearly distinguished.

Your petitioner further sheweth that said real estate so purchased by him, was merely an incident of his contract, and to be regarded as personal estate in a court of equity, and inasmuch as your petitioner caused a license to dig clay therein, to be granted to the Government of the United States, who accepted and used it, he was entitled to be reimbursed the cost of said real estate, according to the spirit and intent of said resolutions of Congress. And your petitioner charges that the Secretary of War was fully empowered and authorized to pass upon and allow the value of said real estate, even if he had done so.

And your petitioner is advised, and charges that said award of the Secretary of War is valid in law and equity, and in strict conformity to the resolution of Congress aforesaid, clothing him with power to make his award in the premises, and that the said award is binding and conclusive on all the departments of the Government, and cannot be gainsaid, denied, altered, or repealed by any subsequent action of Congress, or any department.

Your petitioner further sheweth that the said resolution sufficiently appropriates money in the Treasury of the United States, to satisfy and pay said award, and he avers that there was at and after the passing of said award, and still is a sufficient sum of money applicable to the payment of said award, and which it was and still is the ministerial and imperative duty of the Secretary of the Treasury to pay or cause to be paid to your orator; but your orator avers that the Secretary of the Treasury, just after the rendition of said award, wrongfully, unjustly, and in violation of the authority of said resolution of Congress, referring the claim of your petitioner to the arbitrament of the Secretary of War, and in utter disregard of the rights of your petitioner, refused to pay the amount, or any part of said award to your petitioner.

And your petitioner further relies on his constant and diligent prosecution of his said claim in the Court of Claims, and the Supreme Court of the United States, to show that he has not waived or abandoned the same, but has so far failed to recover the same by the mistaken advice of his counsel only, and for which advice there was probable cause.

But your petitioner further sheweth that he has recently made a demand upon the Hon. Hugh McCulloch, the present Secretary of the Treasury, to pay or cause to be paid to him, the amount of said award; but the said McCulloch has failed and refused to do so.

Your petitioner further avers, that it never was the intention of Congress to deprive him of his contract and his property without just compensation, by inducing him to surrender the same to the Government which has used the same for its own benefit. Nor would it be consonant to the justice or dignity of a great Government longer to oppress an humble citizen, whose only fault has been an implicit reliance in the good faith of that Government.

Your petitioner avers that he has no other remedy or means of obtaining the money so awarded and justly due to him, than by application to this honorable court for the exercise of the powers vested in it.

Wherefore, your petitioner does respectfully pray that your honors, the premises considered, will award the United States writ of mandamus to be directed to the said Hugh McCulloch, Secretary of the Treasury, commanding him to pay or cause to be paid to him, the amount of $119,000, so as aforesaid awarded to him by the Secretary ef War, with interest thereon, from the date of said award.

BRENT & PHILLIPS,
for Petitioner.

[illegible] tary of the Treasury [illegible]

Another petition [illegible]

[illegible] and the [illegible] has [illegible] to respect [illegible] rights [illegible]

However [illegible] made by Congress [illegible] necessary of the Treasury [illegible]

[illegible] render the same [illegible] for its own [illegible] Nor would [illegible]

Your petitioner [illegible] means of obtaining the [illegible] by application to the [illegible] for the [illegible]

Wherefore, your petitioner [illegible] that your honors [illegible]

APPENDIX.

EXHIBIT A.

Agreement between William H. Degges, of Washington, D. C., and Francis H. Smith, of Baltimore, of the first part, and Captain Montgomery C. Meigs, of the United States corps of engineers, of the second part, acting for and in behalf of the United States of America in the construction of the Washington aqueduct, witnesseth: That the party of the first part, in consideration of the matters hereinafter referred to and set out, covenants and agrees to and with the party of the second part to furnish and deliver, at the proper cost of the said party of the first part, a quantity of bricks, to be used in the construction of the Washington aqueduct.

The whole quantity to be furnished under this contract and agreement is not to exceed forty millions, and not to be less than twenty-five millions. They are to be delivered from time to time, as directed by the party of the second part, at such places, such times, and in such quantities as the said party of the second part may direct, and to conform in every particular to the municipal laws of the city of Washington, and to the conditions specified in the printed advertisement hereto annexed, and which is to be considered as part of this contract.

The party of the first part agree to commence the construction of necessary yards, sheds, and machines for the manufacture of the said bricks within twenty days after this contract receives the approval of the Secretary of War; and to grade and prepare, before the first of April, in this present year, yards sufficient for the manufacture of at least sixty thousand bricks per day, provided that all the bricks to be delivered under this contract shall be subjected to a rigid inspection by the party of the second part or his agent appointed therefor, and that this inspection shall be final; and the party of the first part covenants and agrees to remove immediately, at their own cost and expense all bricks deposited on the line of the work which may be rejected or condemned as of unsuitable quality by the party of the second part.

And the party of the second part covenants and agrees to pay to the party of the first part the sum of eight dollars and seventy-five cents for every thousand brick deposited on the line of the aqueduct, in conformity to his directions, which may be inspected and directed by him as of suitable quality: Provided, That if, at any time, the party of the first part shall have deposited on the line of the canal, ready for transportation to the line of the aqueduct, bricks which the party of the second part is not ready to use, a reasonable sum per thousand shall be paid for them, reserving enough of the stipulated price to cover fully the cost of transportation from the canal bank to the aqueduct; and upon each payment the said bricks shall become the property of the United States, not to be removed by the party of the first part for any other purpose than their transportation to the aqueduct line: Provided, however, That in case the party of the second part shall at any time be of opinion that this contract is not duly complied with by the party of the first part, or that it is not in due progress of execution, or that the said party of the first part is irregular or negligent, in such case he shall be authorized to declare this contract forfeited, and thereupon the same shall then become null, and the party of the first part shall have no appeal from the opinion and decision aforesaid; and they hereby release all rights to accept to or question the same in any place or under any circumstances whatever; but the party of the first part shall still remain liable to the party of the second part for the damages occasioned to him by the said non-compliance, irregularity, or negligence: And provided also, That in order to secure the faithful and punctual performance of the covenants above made by the party of the first part, and to indemnify and protect the party of the second part from loss, in case of default and forfeiture of this contract, the said party of the second part shall be authorized to retain in his hands, until the completion of the contract, ten per cent. on the amount of moneys at any time due to the said party of the first part, until the money thus retained shall amount to fifteen thousand dollars, after which the bricks, subsequently delivered, shall be paid for in full on delivery, leaving the aforesaid fifteen thousand dollars in the possession of the party of the second part until the completion of the contract.

And it is further stipulated and agreed that no member of Congress be admitted to any share or part of this contract or agreement, or to any benefit to arise therefrom, and this contract shall be in all its parts subject to the terms and regulations of an act of Congress passed on the twenty-first day of April, in the year of our Lord one thousand eight hundred and eight, entitled "An act concerning public contracts."

And this contract it is also expressly understood to be subject to the terms and conditions of the joint resolution of Congress, approved April 14, 1852, containing a proviso in the following terms, to wit:

"Provided nothing herein contained shall be construed as to authorize any officer of the United States to bind the United States by contract beyond the amount appropriated by Congress, or to sanction any such contract heretofore made.

"Provided, also, that it is expressly understood and agreed that this contract, nor any part thereof, shall not be sub-let nor assigned; but that it shall be well and truly carried out and fulfilled in good faith by the above recited party of the first part, and that all payments on account thereof shall be made to the aforesaid party of the first part, their heirs, executors, or administrators, or to such person or persons as they may lawfully authorize by power of attorney to receive the same.

"And provided further that this contract shall not be binding upon the United States until it shall have received the approval of the Secretary of War."

And for the true and faithful performance of all and singular the covenants, articles and agreements hereinbefore particularly set forth, the subscribers hereunto bind themselves jointly and severally, their and each of their successors, heirs, executors, and administrators.

This covenanted, made, and executed by the parties this 23d day of January, in the year one thousand eight hundred and fifty four, (1854) as witness their hands and seals.

W. H. DEGGES. [L. S.]
F. H. SMITH. [L. S.]
M. C. MEIGS, [L. S.]
Captain Corps Engineer.

Signed, sealed, and delivered in presence of—
James Bryan.
W. G. Fitzpatrick.
G. W. Denham.

EXHIBIT B.

Know all men by these presents, that we, Columbus Alexander and Alexander H. Mechlin, both of the city of Washington, District of Columbia, are held and firmly bound unto the United States of America in the full sum of thirty thousand dollars. lawful money of the United States, to be paid to the said United States or to its proper agent or attorney duly authorized to receive the same, to which payment, well and truly to be made and done, we bind ourselves and every of us, our and every of our heirs, executors, and administrators in the whole and for the whole, jointly and severally, firmly by these presents. Sealed with our seals, and dated this twenty-seventh day of January, anno Domini, one thousand eight hundred and fifty-four.

The condition of the above obligation is such, that if W. H. Degges, of the city of Washington, and Francis H. Smith, of the city of Baltimore, their heirs executors, or administrators, do, and shall well and truly, execute a contract which they, the said W. H. Degges and Francis H. Smith, have entered into with Captain M. C. Meigs, of the United States corps of engineers,o fr and in behalf of the United States, by which they have contracted to furnish and deliver at their own proper cost a certain quanty of bricks, not to exceed forty millions, to be made of tempered clay, conforming in all respects to the municipal laws of the city of Washington, and to be of such qualitity as is specified in such contracts, for the sum of eight dollars and seventy-five cents per thousand, the said contract being hereto annexed, then the foregoing obligations to be void and of none effect; otherwise to remain in full force and virtue in law.

C. ALEXANDER. [L. S.]
A. H. MECHLIN. [L. S.]

Signed, sealed, and delivered in presence of—
J. D. HOOVER.
W. W. PHILIPS.

I certify that I am acquainted with Columbus Alexander and Alexander H. Mechlin, the sureties named in, and who executed the within writing obligatory, and that they are severally freeholders and residents of the city of Washington, and in my opinion sufficient sureties for the purpose mentioned in the within bond.

J. D. HOOVER,
U. S. Marshal, D. C.

Approved February 4, 1854.

JEFFERSON DAVIS,
Secretary of War.

EXHIBIT C.

Memorandum of agreement between Alexander H. Mechlin and Columbus Alexander, of the city of Washington, District of Columbia, of the first part, and William H. De Groot, of New York, of the second part.

Whereas, the said parties of the first part, by their joint and several bond to the United States, bearing date on the 7th January, 1854, became the sureties of W. H. Degges and Francis H. Smith, that they, the said Degges and Smith, should well and truly execute a contract which they had entered into with Captain Montgomery C. Meigs, of the United States corps of engineers, which contract was thereunto annexed, bearing date on the 23d day of January, 184. And whereas the said Degges and Smith having failed to perform the said work, the said Meigs has required of the said parties of the first part the performance by them of the said contract as sureties aforesaid. And whereas, the said Mechlin and Alexander will be entitled to receive of the United States the sum of eight dollars and seventy-five cents per thousand for the manufacture and delivery of said bricks, in accordance with the requirements of the said contract; and having to perform the same as sureties, they, the said Mechlin and Alexander, have made the following agreement with the said party of the second part, to wit:

First. That the said party of the second part shall furnish and deliver at the times, places, and in the manner which the said Mechlin and Alexander may be required to do, bricks of the kind and quality required to be delivered and furnished by the said contract with the said Meigs, for which the said Mechlin and Alexander will pay to the said party of the second part the price designated for the same in said contract, to wit, the sum of eight dollars and seventy-five cents per thousand.

Second. To enable the said party of the second part to manufacture the said bricks, he, the said party of the second part, has agreed to purchase of the said Mechlin and Alexander a tract, piece, or parcel of land, containing about fifty acres, situated in Montgomery county, Maryland, being the land purchased by them of Charles G. E. Rosenthal, by deed dated 7th day of February, 1854, and of John Tarman, by deed dated the 20th day of March, 1854, with all the implements, machinery, and buildings which are now thereon: also a canal boat now in or near Georgetown, and a certain quantity of iron castings which have been purchased by the said Mechlin and Alexander for the kilns, at and for the sum of ten thousand dollars, that being an indemnification in part to them for the amount expended by them in the purchase of the said lands, implements, and buildings, with interest thereon, and a reasonable amount for their trouble and time in the premises up to the 23d of April last; which sum is to be paid on the execution of this agreement; which land, implements, buildings, and other property, the said Mechlin and Alexander agree, upon the execution of this agreement, to convey to the said party of the second part, by a good and sufficient deed of conveyance, in fee, with special warranty; whereupon, and simultaneous therewith, the said party of the second part shall execute and deliver to the said Mechlin and Alexander a good and sufficient deed of trust to such trustee as they shall name, upon the said land, implements, buildings, and other property, upon the following trusts, to wit: That in case of the failure of the said party of the second part in the furnishing and delivering of the said bricks in accordance with the said contract with the said Meigs, that it shall and may be lawful for the said trustee to enter upon the same, and deliver possession thereof to the said Mechlin and Alexander, to be held by them until they, as sureties as aforesaid, shall have completely and entirely performed and fulfilled the said contract with the said Meigs; and further, in that event, after the said contract shall have been so fulfilled by the said Mechlin and Alexander upon this further trust, that the said land, implements, buildings, and other property, so as aforesaid specified, shall be sold by the said trustee at public or private sale, and on such terms and notice, and at such time and place as the said trustee shall deem most expedient for all the parties concerned; and out of the proceeds arising from such sale pay to the said Mechlin and Alexander, or their assigns, the full amount of the damages they may sustain by the failure aforesaid, and the balance, if any, shall pay to the said party of the second part, or to his assigns.

Third. It is furthermore stipulated and agreed by and between the parties hereto, that inasmuch as the said Mechlin and Alexander are responsible primarily to the United States as sureties, as aforesaid, for the due fulfillment and performance of the said contract with the said Meigs; and their liability has to continue throughout, and that they have already been subjected to great inconvenience, trouble, anxiety, and hazard, it is expressly agreed by and between the parties hereto that the party of the second part shall pay to the said

Mechlin and Alexander, or their assigns, out of each and every sum of money which he may receive for the furnishing and delivery of said bricks the sum or amount of five per centum thereon; the said sum or amount to be paid to them by the said party of the second part at the time it is received by him under the authority from them, as hereinafter provided.

Fourth. The said Mechlin and Alexander shall give the said party of the second part a power of attorney for the receipt of the said sum of eight dollars and seventy five cents per thousand for the furnishing and delivery of said bricks for the United States, which power of attorney, when given, shall be exercised by him as long as this contract is truly and faithfully performed by him. The power of attorney to be delivered when the deeds aforesaid are respectively delivered; the deeds and power of attorney to be delivered not later then Wednesday next.

Fifth. That all expenses and liabilities the said Mechlin and Alexander have incurred and contracted since the 23d of April, 1855, in the execution of the said contract with the said Meigs and of this arrangement, shall be fully and promptly paid and assumed by the said party of the second part, the said expenses to be paid and liabilities assumed on or before the 1st day of June next, 1855.

In witness whereof the parties to this agreement have hereunto set their hands and seals this 9th day of May, 1855. Executed in triplicate.

A. H. MECHLIN. [SEAL.]
C. ALEXANDER. [SEAL.]
W. H. DE GROOT. [SEAL]

Signed, sealed, and delivered in presence of—
CHARLES STEARNS.

We hereby acknowledge the receipt from Charles Stearns of his draft for the sum of ten thousand dollars on Samuel Eugene Stearns, of New York, in our favor, dated the 9th day of May, 1855, at one day after sight, which draft was paid by William H. De Groot, of New York, being the consideration sum of ten thousand dollars mentioned in the within agreement.

A. H. MECHLIN.
C. ALEXANDER.

EXHIBIT D.

Know all men by these presents that we, the undersigned, Alexander H. Mechlin and Columbus Alexander, of the city of Washington, D. C., sureties of William H. Degges & Francis H. Smith contractors to furnish bricks for the Washington aqueduct, under a contract entered into between them and Captain Montgomery C. Meigs, of the corps of engineers of the United States, in charge of said aqueduct, and acting for and in behalf of the United States, said contract bearing date on the 23d day of January, 1854, the said Degges & Smith, as said contractors, having failed to comply with the requirements of said Meigs, made in pursuance of said contract, and the undersigned, in consequence thereof, having been required by said Meigs as sureties aforesaid, to carry and fulfil said contract, we, therefore, the undersigned, as authorized by said contract, hereby constitute and appoint William H. De Groot, of the city of New York, for us and each of us, our true and lawful attorney, and in our name and steads to receive from the proper officer or officers of the United States all sum or sums of money now due or which may hereafter be due and owing to us under said contract for bricks furnished for said aqueduct, and generally, in our names and steads, to transact all business in relation to the fulfilment of said contract, our said attorney being hereby authorised and empowered by us to give, make, and execute for us and in our names all sufficient receipts and acquittances that may be required for payments on accounts of bricks delivered under contract, the same to be regarded as if made and executed by ourselves in person. And we further hereby authorize and empower our said attorney to delegate, transfer, and assign all the rights, power, and authority hereby conferred on him to any person or persons, attorney or attorneys, acting under him, he may duly authorize so to act.

In witness whereof we, the said Alexander H. Mechlin and Columbus Alexander, have hereunto annexed our hands and seals on this twenty-fifth day of July, A. D. 1855.

[SEAL.] A. H. MECHLIN.
[SEAL.] C. ALEXANDER.

EXHIBIT E.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury shall settle and adjust with all the parties respectively interested therein, on principles of justice and equity, all damages, losses, and liabilities incurred or sustained by said parties respectively, on account of their contract for manufacturing brick for the Washington aqueduct; and he is hereby directed to pay the amount found due by such settlement and adjustment out of the appropriation made to pay liabilities for the said aqueduct by the "Act making appropriations for certain civil expenses of the Government for the year ending June 30th, 1857," approved the 18th August, 1856: *Provided*, That the said parties first surrender to the United States all the brick made, together with all the machinery, and appliances, and other personal property prepared for executing the said contract, and that the said contract be cancelled.

Approved March 3d, 1857.

EXHIBIT F.

Whereas, pursuant to a joint resolution of Congress, passed March 3d, 1857, William H. De Groot, Henry Kellogg, Alexander H. Mechlin, and Columbus Alexander, did, on the 8th of April, 1857, by deed of that date, surrender to the United States all the brick made, together with all the machinery and appliances and other personal property prepared for executing the contract for manufacturing brick for the Washington aqueduct, which property so surrendered is situated upon the tract of land containing fifty acres known as the Hunting Park, conveyed by Alexander H. Mechlin and Columbus Alexander, to the said Wm. H. De Groot, in fee simple, by deed dated 30th May, 1855, recorded in the land records of the circuit court for Montgomery county, Maryland, Lib. J. G. H., No. 4, pages 366, 367, 368, 369, as by reference thereunto being had for more perfect description will appear.

And whereas the said land was purchased, a brick-yard thereon opened, sheds and kilns erected, a steam engine put up, and machinery and appliances prepared for executing the said contract.

And whereas the said premises with the brick-yard, shed, kilns, engine, and machinery thereon, and the use of the clay and material thereof, are valuable and useful to the United States for manufacturing brick for the Washington aqueduct; and whereas, Capt. Montgomery C. Meigs, engineer in charge of the Washington aqueduct, has requested possession of said premises, with the use use of the clay and materials thereof for the United States, and possession thereof hath accordingly been given to him:

Now, in consideration of the premises, and of the settlement and adjustment and payment provided for by the aforesaid resolution of Congress and the sum of one dollar there in hand paid, the receipt whereof is hereby acknowledged, the undersigned Wm. H. De Groot, Henry Kellogg, Alexander H. Mechlin, and Columbus Alexander have leased, demised, surrendered, licensed, and permitted, and do, by their presents, lease, demise, surrender, license, and permit unto the United States, its officers, servants, and agents, and assigns, to possess, occupy, and use the tract of land and premises aforesaid, and the brick kilns, sheds, yards, and appurtenances thereunto belonging, for the term of ten years from the said eighth day of April, 1857, or until the completion of the Washington aqueduct, together with the lease, privilege, and right, during the term aforesaid, of making brick thereon, and of digging, manufacturing, burning, removing, and using all the clay and other materials in and upon the said premises that may be required or needed for manufacturing and furnishing bricks for the Washington aqueduct.

In testimony whereof we have hereunto set our hands and seal this 22d day of April, 1857.

WM. H. DE GROOT. [SEAL.]
HENRY KELLOGG. [SEAL.]
A. H. MECHLIN. [SEAL.]
C. ALEXANDER. [SEAL.]

Signed, sealed, and acknowledged, and delivered in presence of—

CHARLES NAYLOR.
CHARLES D. SELDING.

In testimony whereof the Alexander H. Mechlin, Columbus Alexander, Wm. H. De Groot, and Henry Kellogg, have hereunto set their hands and affixed their seal this eighth day of April, 1857, in presence of—

EDWIN M. STANTON.
CHARLES NAYLOR.

A. H. MECHLIN. [SEAL.]
C. ALEXANDER. [SEAL.]
WM. H. DE GROOT. [SEAL.]
HENRY KELLOGG. [SEAL.]

A true copy:

K. H. WEIGHTMAN.

I hereby certify that the aforegoing is truly copied from original on file in this office.

Third Auditor's Office, Treasury Department, January, 1859.

R. J. ATKINSON,
Auditor.

EXHIBIT G.

Whereas, pursuant to a joint resolution of Congress, passed March 3d, 1857, Wm. H. De Groot, Henry Kellogg, Alexander H. Mechlin, and Columbus Alexander, did, on the 8th day of April, 1857, by deed of that date (duly executed, acknowledged, and delivered to the United States) surrender to the United States all the brick made, together with all the machinery and appliances, and other personal property prepared for executing the contract for manufacturing brick for the Washington aqueduct, which property so surrendered is situated upon the tract of land containing fifty acres, known as Hunting Park, conveyed by Alexander H. Mechlin and Columbus Alexander to the said William H. De Groot, in fee simple, by deed dated 30th May, 1855, recorded in the lands records of the circuit court for Montgomery county, Maryland, Liber J. G. H., No. 4, pages, 366, 367, 368, 369, as by reference being thereunto had for more perfect description will appear.

And whereas the said tract of land and premises, with certain machinery and other personal property, were, by deed dated the said 30th day of May, 1855, conveyed to Hinson Bowen in trust for purposes mentioned in said deed, which was duly recorded in the land records of the aforesaid court, county, and State, Liber J. G. H., No. 4, folios 369, 370, 371, 372, 373, and 374, as by reference being thereunto had will fully and at large appear.

And whereas the said De Groot, Kellogg, Mechlin, and Alexander, at the request of Captain Montgomery C. Meigs, engineer in charge of the Washington aqueduct, did, by deed dated the 22d day of April, 1857, lease, demise, surrender, license, and permit unto the United States, its officers, servants, agents, and assigns, to possess, occupy, and use the tract of land and premises aforesaid, and the brick-kilns, sheds, yards, appurtenances thereunto belonging, for the term of ten years from the said 8th day of April, 1857, or until the completion of the Washington aqueduct, together with the leave, privilege, and right, during the term aforesaid, of making brick therein, and of digging, manufacturing, burning, removing, and using all the clay and other material in and upon the said premises that may be required or needed for the manufacturing and furnishing brick for the Washington aqueduct, which recitals, by reference to the said two deeds of surrender and lease, duly executed, acknowledged, and delivered to the United States, will at large appear with the full contents of the.

And whereas the said Captain Montgomery C. Meigs, engineer in charge as aforesaid, hath requested that Harrison Bowen, trustee as aforementioned, shall ratify and confirm the said two deeds of surrender and lease of the aforementioned tract of land, premises, machinary, appliances, and other personal property, the one vacated the 8th, and the other the 22d of April, 1857.

Now, in consideration of the premises, and at the instance and request of the said De Groot, Kellogg, Mechlin, and Alexander, and for and in consideration of the sum of one dollar to me in hand paid by the United States, the receipt whereof is hereby acknowledged, I, Harrison Bowen, of the city of Washington, in the District of Columbia, trustee as aforesaid, have ratified and confirmed, and by these presents do ratify and confirm the afore recited deeds of surrender and lease, executed and acknowledged, and delivered to the United States as aforesaid, and every article, clause, and thing in the said deeds of surrender and lease, contained as fully and effectually to all interest and purposes as if I had been in due form a party thereto. In testimony whereof I have herennto set my hand and seal of the city of Washington this twenty-third day of May, in the year of our Lord one thousand eight hundred and fifty-seven, (1857.)

HARRISON BOWEN. [SEAL.]

Signed, sealed, and acknowledged, delivered in presence of us.

CHARLES NAYLOR.
CHARLES DE SELDING.

True copy:

R. H. WEIGHTMAN.

[Copy.]

THIRD DISTRICT OF——, *County of Washington, to wit:*

Be it remembered, and it is hereby certified, that on this twenty-third day of May, in the year of our Lord one thousand eight hundred and fifty-seven, before me, the subscriber, a commissioner of the State of Maryland, in and for the District of Columbia and county aforesaid, to take the acknowledgements of deeds, and to take the acknowledgements and the proofs of other instruments of writing which are to be used and recorded in said State, personally appears Harrison Bowen, he being known me to be the person who is named and described as and professing to be party to the foregoing and annexed deed or instrument of writing, and he acknowledges the said deed or instrument of writing to be his act and deed, and desirous that the same may be received, recorded, and accredited as such.

In testimony whereof I have hereunto subscribed my name and affixed my official seal as commissioner of deeds, &c., for the State of Maryland, in the District of Columbia.

CHARLES DE SELDING,
Commissioner for the State of Maryland.

True copy:

R. H. WEIGHTMAN.

I hereby certify that the aforegoing is truly copied from the original on file in this office.

Third Auditor's office, Treasury Department, January, 1859.

R. J. ATKINSON,
Auditor.

EXHIBIT H.

Whereas, on the 7th of January, 1854, an agreement was made and entered into by and between William H. Degges and Francis H. Smith of one part, and Captain Montgomery C. Meigs of the other part, by which the said Degges and Smith agreed to furnish and deliver brick for the Washington aqueduct as in said agreement set forth. And whereas Alexander H. Mechlin and Columbus Alexander, by this writing subjoined in said contract, became bound in the sum of $30,000, as sureties of the said Degges and Smith for the performance of said contract, and whereas afterwards the said Mechlin and Alexander, as such sureties, upon the failure of Degges and Smith to perform the contract, are called upon and required to perform the said contract, and became substituted parties and agree to perform the same. And whereas afterwards, on the 9th of May, 1855, by an agreement between the said Alexander H. Mechlin and Columbus Alexander with William H. De Groot of that date, the said De Groot did agree and contract to finish and deliver the said brick pursuant to the terms of said original contract. And whereas afterwards, on the 3d day of March, 1856, by an agreement of that date between the said Mechlin and Alexander and Henry Kellogg, the same Kellogg did agree to furnish and deliver said brick according to the terms and conditions of said original contract of Degges and Smith; all which will more fully appear by reference to said agreement, which, for greater certainty, are referred to.

And whereas, by a certain joint resolution of the Senate and House of Representatives in Congress assembled, passed and approved on the 3d of March, 1857, it was

Resolved, That the Secretary of the Treasury shall settle and adjust with all the parties respectivelly interested therein, on principles of justice and equity, all damages, losses, and liabilities incurred or sustained by said parties, respectively, on account of their contract for manufacturing brick for the Washington aqueduct. And he is hereby directed to pay the amount found due by such settlement and adjustment out of the appropriations made for pay liabilities for the said aqueduct by the act making appropriations for certain civil expenses of the Government for the year ending June 30th, 1857, approved the 18th of August, 1856: *Provided*, That the said parties first surrender to the United States all the brick made, together with all the machinery and appliances and other personal property prepared for executing the said contract, and that the said contract be cancelled, as by the said resolution will appear.

Now, in consideration of the premises, and to effect the settlement and adjustment above referred to, and in compliance with the resolution aforesaid, the undersigned do hereby surrender to the United States all the brick made, together with all the machinery and appliances, and other personal property prepared for executing the said contract, and the said contract, is hereby cancelled and given up.

In testimony whereof the said Alexander H. Mechlin, Columbus Alexander, William H. De Groot, and Henry Kellogg have hereunto set their hands and seals this 8th day of April, 1857, in presence of—

Edwin M. Stanton,
Charles Naylor.

A. H. MECHLIN. [L. S.]
C. ALEXANDER. [L. S.]
WM. H. DE GROOT. [L. S.]
HENRY KELLOGG. [L. S.]

True copy:

R. H. WEIGHTMAN.

District of Columbia, *County of Washington, to wit:*

Be it remembered, and it is hereby certified, that on this twenty-second day of April, in the year of our Lord one thousand eight hundred and fifty-seven, before me, the subscriber, and commissioner of the State of Maryland in and for the district and county aforesaid, to take the acknowledgments and the proofs to other instruments of writing which are to be used and recorded in the State, personally appears Wm. H. De Groot, Henry Kellogg, Alexander H. Mechlin, and Columbus Alexander, they being known to me to be the persons who are named and described as and professing to be parties to the foregoing and annexed deed or instrament of writing, and they acknowledge the said deed or instrument of writing to be their respective act or deed, and desire that the same may be received, recorded, and accredited as such.

In testimony whereof I have hereunto subscribed my name, and affixed my official seal as commissioner of deeds, &c., for the State of Maryland in the District of Columbia.

CHARLES DE SELDING,
Commissioner for the State of Maryland.

True copy:

R. H. WEIGHTMAN.

I certify that the foregoing surrender and acknowledgment are true copies of papers on file in this office, which papers purport to be copies, the original, not being on file.

Treasury Department, Third Auditor's Office, December 4th, 1863.

R. J. ATKINSON,
Third Auditor.

EXHIBIT I.

Be it resolved, &c., That in the further execution of the joint resolstion of the 3d of March, 1857, relative to the settlement of the damages, losses, and liabilities incurred by certain parties interested in the contract for furnishing brick for the Washington aqueduct, the Secretary of War be, and he hereby is, directed and required to settle the account of William H. De Groot on principles of justice and equity, allowing to the said De Groot the amount of money actually expended by him in and about the execution of the said contract; and also to indemnify him for such losses, liabilities, and damages, as by virtue of the said joint resolution he was entitled to receive; the amount so found to be due to the said

De Groot to be paid to him out of the fund named in said joint resolution, or if that has been diverted to other purposes, out of any money in the treasury not otherwise appropriated: *Provided, however*, That there shall be deducted from the losses, liabilities, and damages found due to him the amount paid to him by the Government.

Approved June 15th, 1860.

EXHIBIT K.

Under the "Joint Resolution for the relief of Wm. H. De Groot," approved June 15, 1860, Mr. De Groot has submitted accounts and vouchers for the following amounts:

1. To amount for money expended on account of brick contract	$68,337	18
Interest on the same	13,300	84
Total	81,638	02
2. Profits on 37,169,830 bricks, at $4 per thousand	148,643	51
Deduct sundry payments on account of contract.	18,074	85
Remainder	130,568	66
3. To loss and damage sustained in De Groot's business in New York in consequence of the cancellation of his contract	37,500	00
4. To personal expenses in prosecuting claim before Secretary of Treasury and Congress	1,350	00
Loss of time and neglect of regular business for 18 months, at $2,500 per year	3,750	00
5. To expenses paid witnesses brought from New York, by order of Secretary of the Treasury	1,260	07
Total amount claimed by De Groot	256,073	25

In ascertaining the amount of monoy to which Wm. H. De Groot is entitled under the joint resolution of June 15, 1860, a great many accounts and vouchers have been examined, but a simple and sound method of estimating his claim will render a minute analysis of his expenses and losses unnecessary.

Wm. H. De Groot was accepted by the Government in place of Alexander and Mechlin, sureties of Degges and Smith, in a contract for furnishing bricks for the Washington aqueduct. The amount of bricks to be supplied under this agreement was to be not less than 25,000,000 nor more than 40,000,000. According to the opinion of the Attorney General, in calculating the damages which De Groot sustained, it is proper to consider the profits which he might reasonably have made had his contract been fully complied with on the part of the Government. The only compensation which he could have received if the contract had been carried out, would have been by the terms of the original agreement, $8 75 per thousand on all the brick which would have been required for the work. But the quantity could not have been less than 25,000,000.

In the absence of evidence as to the amount of brick actually needed for the aqueduct, it is proper to assume the minium amount named in the contract as the basis of the estimate of probable profits. From that amount, the number of bricks actually delivered by Mechlin and Alexander and by De Groot himself, in pursuance of the contract, might be deducted and made the subject of a separate item in the account.

The number of bricks made and delivered by Mechlin and Alexander, was............	1,160,000
The number of bricks delivered by De Groot, in pursuance of the contract, was..........	1,390,753
The number of bricks handed over by De Groot to the Government, when he gave up the contract, was..........................	718,544
Total bricks received by Government.....	3,269,397
Balance of bricks to be delivered according to minimum amounted named in contract...	21,730,703

De Groot is therefore entitled to receive now the profit which he would have made on this last mentioned sum. What the profits would have been appears by several depositions.

1. Andrew De Baum and Richard A Verralen, both practical brick-makers, agree in estimating the cost of the brick when delivered on the line of the work, at $4 80 per thousand—thus leaving to the contractor a profit of $3 95 per thousand. In this estimate, however, they put the cost of transporting the brick from the yard to the line of work at $1 25 per thousand. But Henry W. Burgess, in his deposition, states that he had a contract to haul bricks to the line

of the work at 75 cents per thousand; that he did the hauling at that price, and made money by it.

In addition to this, Verralen, in his deposition states, that he made a contract by which he "engaged to make and deliver bricks along the line of tee aqueduct, according to the Degges & Smith contract, for $5 25 per thousand." He calculated for himself a profit "and could have made one," but in consequence of "the difficulty about an appropriation to carry on the works, he agreed, in April, 1856, to have the contract cancelled."

The testimony of De Baum and Verralen is entitled to great respect, for they were practical men, who knew all about the nature of the work, the location and facilities of the manufactory, and the terms of De Groot's contract. Taken in connexion with the testimony of Burgess, it shows that De Groot could have delivered the bricks on the line of the work at an expense of about $4 30 per thousand, leaving a a clear profit of $4 45 per thousand to the contractor.

2. William Douglass, in his deposition states that he was employed by Captain Meigs after De Groot's agreement had been cancelled, and that he used the yard and machinery which De Groot had turned over to the Government. His contract was to make and deliver the brick in canal boats at $8 25 per thousand. He deposes that he made a profit of upward of $4 per thousand, and expected to make more when he got better facilities for getting his clay to the yard.

All this testimony is that of men who understood the character of the undertaking, the nature of the machinery, and the peculiar advantages and disadvantages of the locality. Some of them base their estimates on actual experiment, which is far more satisfactory than any calculation founded on the mere opinion of experts. The other testimony in the case, consists of the mere estimates of men who had looked at the work, but who had never actually tested the capacity of the machinery and appliances, nor the cost of manufacturing and delivering brick from the Hunting Park works. One of these men, C. C. Coltman, estimates the cost of delivering the brick on the line of the work at $3 per thousand. This is clearly an excessive allowance, but he says that he expected $80,000 to be realized on a bid which was only seventy-five cents per thousand higher than the price contracted to be paid to De Groot.

In view of all this evidence, it is fair to presume, that if De Groot had been permitted to proceed with his contract, he would have made $4 per thousand on all the bricks required for the Washington aqueduct. He is therefore entitled to receive as compensation for the reasonable profits of his contract $4 per thousand on 21,730,703 bricks, amounting to $86,922 81.

To this amount should be added the sum due for the brick actually delivered, and also for the bricks surrendered to the Government when the contract was cancelled, as per statement on first page, 3,269,297. For these he should receive, at the contract price of $8 75 per thousand, $28,606 34.

William H. De Groot has presented a bill of expenses, amounting to $68,337 18, exclusive of interest, for money "actually expended by him in and about the execution of the contract. These expenses are given in detail, accompanied by suitable vouchers. They may be classed under several heads—such as outlay for the transportation of bricks—outlay for subsistence of hands—outlay for the manufacturing bricks, &c. But these expenses were such as De Groot must necessarily incurred in order to fulfil the stipulations of the agreement, and his only compensation would have been, by the terms of his contract, the sum of $8 75 per thousand, on the amount of brick actually required (not less than twenty-five millions.) It is to be presumed Congress did not mean to do more than make the contractor whole. It meant to put him in as good a condition as if the agreement had been strictly fulfilled by both parties, according to its letter and intention. It is true, the joint resolution allows him moneys actually expended and also losses, liabilities, and damages. But "damages" is a word of more general signification than the others, and I can fix no standard by which to measure them beyond the profits on the contract of which he has been deprived

When Mr. De Groot is allowed compensation for the brick actually delivered according to the contract price, he cannot also claim to be paid for the expense of making them. And in like manner, when he is paid by the Government all the profit which he could have made, over and above his outlay, on the bricks which remained to be delivered, he cannot also be justly entitled to receive compensation for those preparations which were necessarily made by him in order to carry out his agreement. This view of the case disposes, at once, of a large number of items which require no other notice.

But it must be remembered that when Mr. De Groot's contract was surrendered, he delivered to the United States the brick-yard at Hunting Park with it appurtenances, machinery, and improvements. All these he would have retained had his contract been carred out. But this property was surrendered to the United States in compliance with the requirements of the joint resolution of March 3d, 1857. It was, I think, clearly the intention of Congress to make compensation for the loss which he thus sustained. And accordingly, in addition to the damages already allowed, it is proper to refund to Mr. De Groot such items of expenditure as were necessarily involved in the purchase and improvement of his brick-yard and its appurtenances. These are stated on the schedule, which is supported by vouchers, amounting

to		$29,323 22
Add estimated profits		86,922 81
Add price of brick delivered and surrendered by De Groot		28,606 34
Total amount		$144,852 37
From the sum thus allowed must be deducted the following amounts actually paid to De Groot on his contract:		
To D. S. Darling, attorney of De Groot, attorney of Alexander and Mechlin	$9,928 41	
To Kellogg, attorney by Alexander and Mechlin	8,113 50	
To De Groot, by Alexander and Mechlin, out of the amount awarded to them by the Secretary of the Treasury under the joint resolution of March 3d, 1857	7,576 .00	
		25,617 91
Leaving a balance of		119,234 46

Which sum af one hundred and nineteen thousand two hundred and thirty-four dollars and forty-six cents is the amount to be due to the said De Groot, "under the joint resolution, approved June 15, 1860," and will be paid to him accordingly.

War Department, August 17, 1860.

JOHN B. FLOYD,
Secretary of War.

EXHIBIT L.

Be it remembered, That John Wilson, Esq., who certified the annexed transcript, is now, and was at the time of doing so, Third Auditor of the Treasury, and that full faith and credit are due to his official attestations.

In testimony whereof, I, Hugh McCulloch, Secretary of the United States, have hereunto subscribed my name, [L. S.] and caused to be affixed the seal of this Department, at the City of Washington, this 17th day of January, in the year of our Lord, 1868.

H. McCULLOCH,
Secretary of the Treasury.

TREASURY DEPARTMENT,
Third Auditor's Office, *January* 17, 1868.

It is herepy certified, that the annexed are true copies of the originals on file in this office relative to a claim of William DeGroot in the matter of the Washington Aqueduct.

JOHN WILSON, *Auditor.*

Schedule of property surrendered by William H. DeGroot to the United States in pursuance of Joint Resolution, March 3d, 1857, for moneys actually expended in and about the execution of said contract for furnishing brick for the Washington Aqueduct, as per Joint Resolution of June 15, 1860.

To work done in preparing and improving the brick yard at Hunting Park	$5,796 81
Mecklin & Alexander for the clay	3,703 19
Canal boat Morning Star	500 00
Augers and belting	50
Auger without handle	46
Auger for clay	2 50
Anvil	15 00
4 axes	5 62
2 pieces leather belting, 8 inch, 36 feet, at 56 cts.	20 16
1 piece do. do. 6 inch, 18 feet, at 46 cts.	7 92
9 barrows for burnt brick, at $7	63 00
8 clay barrows, at $7	56 00
5 sand barrows, at $7	35 00
12 green brick barrows, at $7	74 00
8 boxes for sand, at $1 50	12 00
4 boxes for water at $1	4 00

1 brick spat	75
1 block, single, 6 in	1 00
5 blocks, double	2 00
2 brushes, at 50 cts	1 00
5 brass cocks, large, at $1	5 00
5 brass cocks, small, at 75 cts	3 75
4 brick planes, at 75 cts	3 00
3 brick plane blades, at 50 cts	1 50
1 box for sand	1 50
2 brick kilns, containing 250,000 bricks	2,200 00
14 meal bags, at 25 cts	3 50
3 do. do. do.	75
1 bucket	50
1 chisel	50
3 clay slashes, at $1	3 00
1 clamp for saw-setting	25
3 curricombs 12⅛ cts. each	37
3 carts, at $40	120 00
1 do. do.	40 00
2 large carts, at $55	110 00
5 bushels meal and ship stuff, at 50cts	2 50
1 carpenter's bench	10 00
126 tons of coal, at $4	504 00
1 cold chisel	25
Crown wheel shafting, 3 in., not in use, 1,290 lbs. at 4½ cts	59 05
1 chain pump	5 00
Clevis screw for bolts, 3 pairs	1 50
2 double-trees and bolts	5 00
1 double-tree for 3 horses	3 50
1 hay fork	75
1 do.	1 00
1 do.	75
Frame for support of shafting, consisting of posts, stakes, and 23 wood bearings, about 2,789 ft. lumber	400 00
Portable forge	30 00
1 cart	40 00
1 grind stone and fixtures	2 00
34 lights of glass	1 02
4 bags, at 25 cts	1 00
3 grubbing hoes, at 25 cts	75
Grates for coal kilns, 117 pieces, 7,325 lbs, at 4 c.	293 00
do. worthless, 125½	5 02
1 horse shoe knife	25

1 horse shoe rasp		25
Smith's hand hammer		50
1 horse, dark bay	165	00
1 do. light bay	150	00
1 do. dark bay	175	00
1 do. do.	145	00
1 do. sorrel	225	00
1 mare, dark bay	125	00
2 collars, at $1 25	2	50
6 collars, at $1 25	7	50
2 mule collars, at $1	2	00
Hames and straps, 3 pair, at 75 cts	2	25
4 hames, at 75 cts	3	00
2 blind bridles, at $3	6	00
1 do. do.	3	00
Check rein	2	75
Cart reins, 2 pair, at $1 25	2	50
2 setts cart saddles and breeching, at $6	12	00
1 do. do. do. do.	2	50
2 cart breeching, at $3 50	7	00
1 saddle	2	50
3 cart belly bands, at 50 cts	1	50
3 setts lead harness and traces, at $12	36	00
1 mule breeching	2	50
1 back band	1	75
1 horse blanket and girt	1	50
5 leather halters, at $1 25	6	25
1 riding saddle	15	00
1 bridle and martingale	6	00
1 do. do.	6	00
500 lbs hay	5	00
Hack plank, E S 25 op., 8,385 ft. at 3 cts	251	55
I harrow	25	00
1 hatchet		75
1 hurdy		25
10 lbs iron hoop, at 20 cts	2	00
270 lbs. wrought iron, at 7 cts	18	90
Kiln doors, 56 pairs, 1,470 lbs. at 5 cts	73	50
Kiln irons, 73 pairs, crown, 54 pairs, 695 lbs. 5 c.	34	75
34 kiln props, at 75 cts	25	50
34 yards ½ inch lead pipe for clay pits, 102 lbs. at 12½ cts	12	75
67 yards 1 inch lead pipe for clay pits, 586 lbs. at 12½ cts	67	00
Old lead pipe, 55 lbs. at 12½ cts	6	88

6 lutes, at 83½ cts.	5	00
2 ladders, at $2 50	5	00
Lumber, clear pine, 5 pieces, 75 feet at $40 per M	3	00
292 feet gutter board, at 22 cts.	6	42
756 feet oak plank, 63 pieces, 8x9x2, at $30 per M	22	68
506 feet oak plank, 21 pieces, 16x9x2	15	12
400 feet E. S. plank, 10 pcs., 16x10, at $30 per M	12	00
6 pieces scantling, at 50 cts	3	00
46 feet timber, 5x5, at $22 per M	1	01
924 feet plank in bridge, 22x14x3, spruce	20	32
1 lot plank around smith's machine	15	00
1 do. do. mess house, 500 feet, at 22	11	00
1 do. do. do. 210 do.	4	62
59 moulds for brick, for steam machine, at $2 50	199	50
9 do. do. do. do. less bottom	31	50
2 do. sheet brick, at $1 50	3	00
1 do. cast hand, 3½ ps	5	25
4 Vervalen patent brick machines, at $750	3,000	00
1 Smith's patent	300	00
2 Baker's patent, at $90	180	00
1 Smith's patent, out of repair	300	00
3 pairs grating, 118 lbs., at 4½ cts	5	31
7 pairs wipers and crowders, 651 lbs. at 4½ cts	29	30
13 other extra pieces, 197 lbs., at 8 cts	15	76
3 pinion wheels, 244 lbs., at 8 cts	19	52
2 mess houses, with one kitchen, oven and fixtures	1,500	00
Nail tools, (smith's shop,)		25
90 lbs. of nails, at 5 cts	4	50
10 lbs. do.		50
1 oil can		50
1 oil feeder		25
5 punches stick for smith's shop, at 25 cts	1	25
1 jack plane		75
1 jar plane		75
4 lbs. packing yarn, at 15 cts		60
1 piece gum elastic		25
4 pits for clay, including embankment, board and floor in front of machine, about 2940 ft. at 50	200	00
2 pits for clay at pig mill, 150 feet, at $15	30	00
2 pig mills, at $50	100	00
4 padlocks and keys, at 25 cts	1	00
1 force pump with 13 feet lead pipe	4	00
1 section pump, worked with engine, 28 feet	5	00
1 sucker pump, worked with engine, 22 feet	29	50
1 sett pullies, shaft, crank, belting, and post for same	25	00

1 sub-soil plow	18 00
1 cast beam	10 00
1 do.	14 00
1 Davis, No. 10	15 00
2 picks, at $1	2 00
1 pick	1 00
1 yard roller, cast	18 00
1 hay rake	25
1 do. broken	25
1 scraper, cast iron	8 00
854 bushels sand, for moulding, at 12½ cts	106 75
105 paddles for brick, at $1 25	131 25
1 straw cutter	25 00
1 steam engine, eighteen horse power, with driving wheel	1,800 00
14 shovels, good, 4 medium, at $1	18 00
9 shovels, medium, at $1	9 00
2 shovels, worthless, at $1	2 00
5 seives for sand, at 75 cts	3 75
2 seives, medium, at $1	2 00
1 seive	50
Swingletree irons, 1 set	75
Swingletree iron and wood, 3 sets, at $1	3 00
1 rip saw	1 75
1 hand saw	1 75
1 do. small	1 00
1 compass saw	50
6 ps. screw plate and taps	1 50
Screw driver, less handle	25
4 sand boxes, with wheels, at $3	12 00
1 ten plate stove, 9 plates good	5 00
17 spades, at 75 cts	12 75
3 do. broken, at 75 cts	2 25
10 lbs. cast steel, at 20 cts	2 00
1 smith's fire shovel	50
1 shed for brick kilns, 292x72, 37,000 ft. lumber	1,500 00
4 sheds over machines, 2,400 ft. at $30	120 00
1 shed over engine, 28x15, 1,500 ft. lumber	100 00
1 stable and shedding, 30x18, two story high	500 00
Shanties for laborers, 12x16, 1,500	60 00

SHAFTING, VIZ:

2½ inch shafting, in use, 118 ft.	4,818 lbs. 9c.	433 62
3 do. do. 70 ft.		
Pinion wheels and wood pullies, 4.		
Clutch 4 couplings, 18 ps		

2½ inch shafting, not in use, 14 pcs. 161¾ lbs	4,175 lbs. 9c.	375 75
Pinion wheels, 3		
Wooden pullies, 1		
Clutch, 3		
Coupings, 14½ pcs		
Bearing boxes, 15		
Tool boxes with lot of scrap iron and steel		2 50
3 tables for moulding, at $4 50		13 50
3 tables for moulding, with plates, at $6		18 00
16 trucks, off-bearing, at $7		112 00
1 water-tank, 13x16½x5		150 00
1 water-tank, 6x4x5, not in use,		20 00
1 tool box,		1 00
2 tressels for bridge, at $1		2 00
6 tressels for tank, at $2		12 00
Tool house and shedding, 30x18, 2 stories high		500 00
Vices and bench, 1		6 00
2 wrenches,		2 00
6 wheels, (cast,) with wrought shaft for barrows, at $2		12 00
1 monkey wrench		1 50
1 wagon tongue and wood-shed		5 00
1 windlass frame		75
1 large drum wheel		10 00
3 wrenches, at 50 cts		1 50
2 water-spouts, at 75 cts		1 50
127 cords wood, delivered at yard, at $3		381 00
146½ cords on lot south side canal, at $4		438 37
57⅔½ cords on other side canal, at $2 50		144 14
3 turned post bedsteads, at $4		12 00
2 common bedsteads, at $3		6 00
4 pair white blankets, at $4		16 00
14 bolsters, sea grass, at 50 cts		7 00
3 water buckets, at 50 cts		1 50
6 bake pans, at 75 cts		4 50
16 pieces hemp carpeting, 66 yards, at 37½ cts		24 75
12 comforts, (wool,) at $1 50		18 00
3 old comforts, at $1 50		4 50
1 coffee mill		2 50
1 coffee mill, worthless		75
4 camp pans, at $1 50		6 00
3 cupboards for clothes and books, at $1 50		4 50
Cooking stove and furniture, consisting of 1 iron tea kettle, 2 iron pots, 1 iron boiler, 2 iron bake		

pans, 1 iron frying pan, 1 tin boiler, 1 large griddle, 2 small griddles, 1 steamer, 2 lengths of pipe, 1 elbow	36 00
1 lantern, glass tubes	50
12 corn-husk mattrasses, at $4	48 00
14 sea grass mattrasses, at $1 50	21 00
10 shuck mattrasses, old, at $2	20 00
110 gallon molasses keg	2 00
Oil can, 3 gallons	75
4 pieces plank, 25 feet, at $39 per thousand	75
6 hair pillows, at $1 50	9 00
6 hair pillows, at $1 50	9 00
28 shuck pillows, at 50 cts	14 00
13 sheets, at 50 cts	6 50
9 table knives	37
7 forks	37
1 whitewash brush	25
1 barrow for yard at Great Falls	7 00
	$29,323 22

No. 1.

The United States,

To William H. De Groot, *Dr.*

1857.		
April 8.	To amount due this day for money expended on account of brick contract for the Washington Aqueduct, per account and vouchers filed in the House of Representatives, and which I am entitled to under joint resolution, June 15, 1860	$67,987 18
1860.		
July 8.	To interest on above from April 8, 1857, to this day—3 years and 3 months,	13,257 46
	To amount voucher for property delivered to the Government, and not charged heretofore,	350 00
	To interest on the same from June 15, 1858, to July 8, 1860—2 years and 23 days,	43 38
		$81,638 02

Washington City, *July* 6, 1860.
E. & O. E.

WM. H. DE GROOT.

New York, *February 7th*, 1856.

$350 00.

D. S. Darling & Co., *Bought of* R. & S. A. Vervalen,

Three large horses used for carting, and three setts cart harness, one saddle and bridle, for three hundred and fifty dollars.

June 15*th*, 1858, Received payment.

From W. H. De Groot.

R. & S. A. VERVALEN.

Washington City, *July 6th*, 1860.

Sir: In addition to my communication of this date, I have the honor to submit herewith a statement more in detail, of my claim for relief under the joint resolution of June 15th, 1860.

First. I am entitled to and claim the amount of my actual expenditures in and about the execution of the brick contract, amounting to $81,638 02, as per statement herewith, marked No. 1, the vouchers sustaining the same, are with the papers, transmitted by the clerk of the House of Representatives to your department. The joint resolution prescribes in *express terms*, that I shall be allowed such expenditure.

Second. I claim indemnity for all losses, liabilities, and damages sustained in consequence of the cancellation of the contract, as required by the proviso of the joint resolution of March 3d, 1857.

Under this head, I claim the profit I would have made on the contract, if I had been allowed to complete it, according to its stipulations, which I was ready and prepared to do. The contract stipulated for the delivery of not more than forty millions, nor less than twenty-five millions of bricks, at $8 75 per thousand. As more than forty millions were used in the construction of the aqueduct, it is a legitimate inference, that if the contract had not been cancelled by the requirement of the Government, I should have been compelled to have delivered, according to its stipulation, the forty millions of bricks. The profit which would have inured to me, would have been upwards of, or at least *four dollars* per thousand. This is no speculative estimate, but it is based upon actual results, as disclosed by the deposition of William Douglass, who furnished the bricks subsequently for the aqueduct, which were manufactured in the same yards, and with the identical machinery, surrendered by me to the Government, under the joint resolution of March 3d, 1857.

The amount of damages for loss of profit, as appears by statement No. 2, is $148,643 51, from which the sum of

$18,074 85 is to be deducted, the same being for payments made to me at different times, by Captain M. C. Meigs, for bricks delivered, which payments by the joint resolution of June 15, 1860, are to be deducted from the *losses*, *liabilities*, and *damages found due me*.

I also claim damages for the loss sustained in my business in New York, in consequence of the abandonment of the contract by the Government, which compelled me to make an assignment, and suffer a sacrifice of real estate and stocks, which I had pledged to provide funds for the prosecution of the contract, of which there would have been no necessity, but for the action of the Government in the premises. The loss thus sustained, appears by statement No. 3.

I further claim indemnity for expenses of certain witnesses brought from New York, whose depositions on interrogatories and cross-interrogatories, the Secretary of the Treasury required should be taken at Washington city, and which expenses I was compelled to pay, as appears by statement No. 4, and the vouchers filed therewith.

Lastly. I claim indemnity for loss of time and expenses in the prosecution of my claim before Congress, and the Executive branch of the Government. The amount claimed therefor, appears by statement No. 5.

The joint resolution of June 15th, 1860, provides that there shall be deducted from the *losses, liabilities, and damages found due me*, the amount paid to me by the Government, (meaning of course) the several payments made me by Capt. Meigs, the same being the only sums I ever received from the Government on account of the brick contract. So that it is plainly manifest it was the intent of Congress, I *should be fully indemnified for such losses, liabilities, and damages as I have now presented for your consideration and decision, and that from them, and only from them, shall be deducted the sums received for the bricks delivered under the contract.*

Such, I apprehend, is the only construction of which the joint resolution is susceptible.

Having succinctly stated my several claims for indemnity, which I am prepared to sustain by evidence of the most unquestionable character. I respectfully ask, should there be any doubt as to the propriety of their allowance, permission be granted me to be heard in support thereof.

I have the honor to be, very respectfully,
your obedient servant,
WM. H. DE GROOT.

HON. JOHN B. FLOYD,
Secretary of War, Wash'n, D. C.

EXHIBIT M.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the joint resolution, approved June 15th, 1860, for the relief of William H. De Groot, be, and the same is hereby, repealed, and that the Secretary of War be, and he is hereby, directed to transmit all the papers in his department relating to the case of the said William H. De Groot, to the Court of Claims for examination.

Approved, February 21st, 1861.

EXHIBIT N.

WILLIAM H. DE GROTT, *Appellant*, *vs.* THE UNITED STATES.	*Appeal from the Court of Claims.*

Mr. Justice Miller delivered the opinion of the court:

This is the first appeal from the Court of Claims which we have been called upon to consider since the rules framed by this court regulating such appeals, and the inconsistency between the record presented and the requirements of those rules calls for some observations in this place.

This case, having been decided before they were published, comes under the provisions of the second rule. That rule requires, in addition to the pleadings of the parties and the orders of the court, a specification of the matters alleged for error to be certified by the court, if presented to it correctly by the appellant, and if not correctly stated by him, to be modified according to the truth of the case by the court. The object of this rule, as well as the first, is to present in simple form the questions of law which arose in the progress of the case, and which were decided by the court adversely to appellant. Only such statement of facts is intended to be brought to this court as may be necessary to enable it to decide upon the correctness of the propositions of law ruled by the Court of Claims, and that is to be presented in the shape of the facts found by that court to be established by the evidence (in such form) as to raise the legal question decided by the court. It should not include the evidence in detail.

We have here, beside this simple statement, a record of two hundred and forty pages of printed matter, of which it is fair to say that two hundred are details of evidence excluded by the rule. We were inclined at first to dismiss the appeal for want of a proper record, but upon a closer examination it was discovered that the court below had in good faith complied with the rule, so far as to give the certified statement of the facts found, and of their legal conclusions thereon, and this, with the pleadings, judgment, and other orders in the case, enables us to examine the alleged error in the rulings of the court within the principles we have stated.

The court, however, has, at the request of claimant's counsel, returned the evidence on both sides, which makes the bulky and useless part of the record. We take this occasion to say, that we shall adhere strictly to the rules we have prescribed, and shall regard no other matter found in the transcripts sent to us than what they allow, and that in proper cases the costs of the useless part of the record will be taxed against the party who brings it here.

With these preliminary remarks, we proceed to examine the merits of the case. It is a claim against the United States founded on an award. The statement of facts by the court below informs us that "the claimant has not seen proper to submit any evidence to sustain his original cause of action, but rests his case entirely upon the validity and conclusiveness of the award, made by the Secretary of War."

Among other conclusions of law, the court held the following in reference to this award, which, as they dispose of the case, are all that we need consider.

"1st. That by including in the award the value or price of the real estate upon which the brick-yard was located, Floyd exceeded the powers conferred upon him by the joint resolutions of Congress.

"2d. That having commingled such allowances with the general finding in such manner as to be incapable of separation, it thereby vitiated the whole award.

"4th. Floyd having thus exceeded the powers conferred upon him, it was competent for Congress to disaffirm his acts and revoke the authority conferred upon him, by a repeal of the resolution under which he acted."

That part of the record which is here decided not to be within the submission is thus stated in the award itself: "It must be remembered that when Mr. De Groot's contract was surrendered he delivered to the United States the brick-yard at Hunting Park, with its appurtenances, machinery, and improvements. All these he would have retained had his contract been carried out. But this property was surrendered to the United States in compliance with the requirements of the joint resolution of March 3d, 1857. It was, I think, clearly the intention of Congress to make compensation for the loss which he thus sustained. And, accordingly, in addition to the damages already allowed, it is proper to refund to Mr. De Groot such items of expenditure as were necessarily involved in the purchase and improvement of his brick-yard and its appurtenances. These are stated on the schedule, which is supported by vouchers, amounting to.. $29,323 22

Add estimated profits	86,922 81
Add price of brick delivered and surrendered by De Groot	28,603 34
Total amount	$144,852 37"

The award then deducts certain payments made, leaving a balance of $119,234 46.

The joint resolution above mentioned of March 3d, 1857, lies at the foundation of this claim, and it authorized the Secretary of the Treasury to settle and adjust with all the parties respectively interested therein, on principles of justice and equity, all damages, losses, and liabilities incurred or sustained by said parties on account of their contract for manufacturing brick for the Washington aqueduct, and contained this provision: "That the said parties first surrender to the United States all the brick made, together with all the machines and appliances, and other personal property prepared for executing the said contract, and that said contract be cancelled."

It is pretty clear that without this proviso the Secretary could have acted on no other principle than that of compensating the parties interested for losses and damages growing out of a suspension or abandonment of the contract by the Government, and that this must have been based upon the position of the parties as they stood at the time the resolution passed. What brick the claimants had delivered would have been the property of the United States. All the brick they had on hand not delivered, with the materials, tools, machines, and grounds, would have been the property of claimants, and the damages growing out of this branch of the inquiry would have been the loss sustained by these being rendered useless or less valuable to their owners, because no longer required in fulfilling the contract to make brick.

In what respect, then, does the proviso change this basis of estimating damages? It changes it by requiring the claimants to transfer to the United States certain things they were using in the manufacture of brick for the Government, and allowing compensation for the value of those things, instead of damages for their deterioration. The things thus to be surrendered were "all the brick made, together with all the machinery and appliances, and other personal property prepared for executing the contract."

It is not possible to hold that the land on which the bricks were made, or any improvement on it which had become part of the realty, comes within any of the classes of property here enumerated. It was not bricks; it was not machinery or appliances, and it was not personal property. The phrase "other personal property" implies that only personal property had been previously described.

It is true that the Secretary of War, in making his award, did not derive his power to act as arbitrator from the joint resolution which we have been construing, but from another joint resolution of June 15, 1860. The first resolution referred the matter to the Secretary of the Treasury, and that officer having made his award, Mr. De Groot, after receiving under it $7,576, refused to abide by it, and applied to Congress for further relief. That body referred his claim to the Secretary of War, by the resolution of June 15, 1860, but directed him to proceed in the further execution of the resolution of March 3, 1857, and to indemnify De Groot for such losses, liabilities, and damages as by virtue of said joint resolution he was entitled to receive. It will thus be seen, that while the tribunal was changed, it was to be governed by the principles prescribed by the resolution which we have just construed.

The Secretary of War, then, manifestly exceeded his powers as arbitrator when he awarded to claimant the value of the real estate on which the brick-yard was located, and the money involved in the purchase of it by said claimant.

It is, however, not always that an award is invalid because in some respects it exceeds the submission, for it is said that if the part which is in excess can be clearly separated from the remainder which is within the submission, the latter may stand.

This, as a general rule, is true, but it is subject to some qualifications, one of which is expressed by Chief Justice Marshall, speaking for this court in the case of Carnochan *vs.* Christie, 11 Wheaton, 446, to the effect, that the award to be valid ought to be in itself a complete adjustment of the controversies submitted to the arbitrators.

There is no means by which the sum allowed by the Secretary for this land can be separated from the other allowances made for the personal property, machines, and appliances transferred by claimant to the United States. They are all summed up in one grand item of $29,323 22. What proportion of this item is for the land it is impossible to tell. If we reject the whole of this item, then the claimant has no allowance for the machines, appliances, and personal property transferred to the Government, and for the real loss in the purchase of land, and improvements placed on it for this specific purpose, the value of which must be much diminished by diverting it from that use.

It thus appears that the arbitrator has exceeded his authority in some respects, that he has failed to award as to other matters submitted to him, and that in the award made, these matters cannot be distinguished from each other.

The United States cannot, after having twice referred these matters to arbitration—the second time on account of the dissatisfaction of the claimant with the result of the first—be bound now to accept an award which clearly does not dispose of part of the demands submitted, and which allows large sums for matters not submitted.

If these views be sound, the two first propositions of law decided by the Court of Claims were well decided.

We think the fourth proposition equally clear.

The Government of the United States cannot be sued for a claim or demand against it without its consent. This rule is carried so far by this court, that it has been held that when the United States is plaintiff in one of the Federal courts, and the defendant has pleaded a set-off which the acts of Congress have authorized him to rely on, no judgment can be rendered against the Government, although it may be judicially ascertained that on striking a balance of just demands the Government is indebted to the defendant in an ascertained amount. And if the United States shall sue an individual in any of her courts, and fail to establish a claim, no judgment can be rendered for the cost expended by the defendant in his defence.

If, therefore, the Court of Claims has the right to entertain jurisdiction of cases in which the United States is defendant, and to render judgment against that defendant, it is only by virtue of acts of Congress granting such jurisdiction, and it is limited precisely to such cases, both in regard to parties and to the cause of action, as Congress has prescribed.

It is true that ordinarily, when we seek for the foundation of this jurisdiction, we look to the general laws creating the court, and defining causes of which it may have cognizance. But it is equally true that whenever Congress chooses to withdraw from that jurisdiction any class of cases which had before been committed to its control, as it has done more than once, it has the power to do so, or to prescribe the rule by which such cases may be determined. Its right to do this in regard to any particular case, as well as to a class of cases, must rest on the same foundation; and no reason can be perceived why Congress may not at any time withdraw a particular case from the cognizance of that court, or prescribe in such case the circumstances under which alone the court may render a judgment against the Government.

The Court of Claims, in the adjudication of the case before us, has been acting under one of these special acts of the legislative department. A third joint resolution on the subject of this claim was passed by Congress and approved July 21, 1861, some months after the award of the Secretary of War was published. This resolution declares "that the joint resolution approved June 15, 1860, for the relief of William H. De Groot, be, and the same is hereby, repealed, and that the Secretary of War be, and he is hereby, directed to transmit all papers in his department relating to the case of said William H. De Groot to the Court of Claims for examination."

The case being thus transferred from the Secretary of War to the Court of Claims, with a repeal of the resolution under which the Secretary had acted, must be considered as coming into that court with the limitations prescribed by that resolution. This shows very clearly that Congress intended that no judgment should be rendered against the Government on the award of the Secretary of War, but that the examination to be made by the Court of Claims should be free from that embarrassment. Could that court entertain jurisdiction of the case, and violate this requirement?

It is said by claimant that the case did not come into that court under that resolution, but was brought there by his own petition. But, however it may have come there, the rule prescribed by Congress adheres to it, if Congress had the right to prescribe it. Entertaining no doubt of the power of the legislative body to define the terms on which judgments may be rendered against the Government as to classes of cases, or as to individual cases, we think the Court of Claims was bound to accept the resolution of February, 1861, as the law of the case in that court. The effect of this resolution on the award, if it should ever come in question in a court not limited by the restrictions which govern that court, we need not decide.

As we can only consider here, what judgment that court should have rendered, we conclude that its judgment was right, and it is therefore affirmed.

D. W. MIDDLETON,
Clerk Supreme Court United States.

Supreme Court of the United States.

THE UNITED STATES EX RELATION W. H. DE GROOT

vs.

HON. ANDREW WYLIE,

JUDGE OF THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Notes of relator's counsel on petition to lay the rule to show cause why a mandamus should not issue directing the Judge below to proceed, &c.

His Honor, Judge Wylie, having refused to allow the relator the necessary process to bring into court the Hon. Hugh McCulloch, Secretary of the Treasury, against whom a mandamus was prayed, we rely on the following points, viz :

1. "It is well settled that a mandamus, in modern practice, is nothing more than an action at law between the parties, and is not now regarded as a prerogative writ. But the right to the writ, and the power to issue it, has ceased to depend upon any prerogative power, and it is now regarded as an ordinary *process* in cases to which it is applicable."

Kentucky *vs.* Dennison, 24 How., 97.

In the case of Judge Watrous, this Court granted a rule on him to show cause why a preremptory mandamus should not issue commanding him to allow an appeal, but on hearing his answer, it was held that the Judge was right and the appeal was not properly prayed.

20 How., 280.

In ex parte Bradstreet, 6 Peters, 775, this Court awarded a rule on Judge Conklin, of the District Court of the United

States, to show cause why he should not reinstate certain suits improperly dismissed by him.

And in same case, 7 Peters, 647, Chief Justice Marshall delivered the opinion and said, "that every party has a right to the judgment of *this* Court in a suit brought by him in *one* of the inferior Courts of the United States," &c. "Consequently he cannot be legally prevented from bringing his case before this tribunal. The Court doth therefore direct that a mandamus be awarded to the Judge, &c., requiring him to reinstate and proceed to try and adjudge according to the right of the case the several suits of right," &c.

In ex parte Crane, 5 Peters, 191, this Court decided "that in virtue of its appellate and supervisory jurisdiction, it possessed the power, by mandamus, to compel the Judge below to sign exceptions according to the truth of the matter," and "that this jurisdiction was conferred by the thirteenth section of the judiciary act."

The jurisdiction, therefore, of this Court to grant the mandamus is clearly established, and its exercise is necessary to enable the relator to have his case instituted in Court, that it may ultimately be brought for review before this tribunal.

If the precedent now sought to be established by the Judge below is permitted, this Court must be hereafter annoyed constantly with applications like the present, as inferior Judges would feel authorized to refuse process to a suitor, or to compel an answer, whenever they thought a complaint groundless.

In this very case, the Judge decided the whole matter without any opportunity being afforded to the counsel of the relator for argument.

2d Point. The petitioner shows a case meritorious and equitable, in this, that relying in good faith on a joint resolution of Congress, referring the measure of his compensation to the award of the Secretary of War, he accepted the conditions of that resolution and surrendered to the Government his contract, together with a large amount of property, for which he has not been paid to this day; that the Secretary of War duly made an award in favor of the relator for a sum of money, which he then and there demanded payment of, from the Secretary of the Treasury, which was refused.

A prima facie case, at least, is presented by the petition, and on which the Judge below has refused to allow a rule to issue against the Secretary of the Treasury to show cause why the mandamus should not issue.

BRENT & PHILLIPS,
For Petitioner.